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NOTE

From:	Mr. Claude Moraes, Chairman of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament
On:	18 December 2015
To:	Mr. Ambassador Christian Braun, Permanent Representative, Council of the European Union
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) [First reading] - Confirmation of the final compromise with a vue to agreement

Delegations will find enclosed a letter of Mr. Claude Moraes, Chairman of the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament to Ambassador Christian Braun, Chairman of the Permanent Representatives Committee, concerning Council's position at first reading on the Proposal for a General Data Protection Regulation.

Committee on Civil Liberties, Justice and Home Affairs
The Chairman

IPOL-COM-LIBE D (2015) 61778 — Strasbourg, 17 December 2015

Mr. Christian BRAUN
Ambassador,
Permanent Representative of Luxembourg
Council of the European Union
Rue de la Loi 175
1048 Brussels

D 204659 17.12.2015

Subject: Council's First Reading Position on the proposal for a regulation of the European Parliament and of the Council on the protection of individual with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) (2012/0011(COD))

Dear Ambassador Braun,

Following the positive outcome of the confirmation vote on the General Data Protection Regulation that took place in the meeting of the Committee on Civil Liberties, Justice and Home Affairs of 17 December 2015, I would like to inform you that the LIBE Committee considered positively the acceptance of the text set out in the Annex which reflects the outcome of the negotiations between the three Institutions.

Thus, I would like to inform you that, if this text was to be transmitted formally to the European Parliament as the Council's First Reading Position for this legislative proposal, I will recommend to the Members of the Committee on Civil Liberties, Justice and Home Affairs and subsequently to the Plenary that the Council's First Reading Position be accepted without amendments in Parliament's second reading, subject to verification by the lawyer linguists of both Institutions and the alignment of the relevant definitions with those agreed in the Data Protection Directive.

I would like to thank you and the previous Council Presidencies for the close cooperation on this file.

Yours sincerely,

Claude Moraes

Claude MORAES

Annex: text agreed

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REGULATION (EU) No XXX/2016 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 16 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Having regard to the opinion of the Committee of the Regions[2],

Having regard to the opinion of the European Data Protection Supervisor[3],

Acting in accordance with the ordinary legislative procedure[4],

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1 **[XXX]**

2 **[XXX]**

3 **[XXX]**

4 Position of the European Parliament of 14 March 2014 and decision of the Council of **[XXX].**

Whereas:

(1) The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 8(1) of the Charter of Fundamental Rights of the European Union and Article 16(1) of the Treaty lay down that everyone has the right to the protection of personal data concerning him or her.

(2) The principles and rules on the protection of individuals with regard to the processing of their personal data should, whatever the nationality or residence of natural persons, respect their fundamental rights and freedoms, notably their right to the protection of personal data. It should contribute to the accomplishment of an area of freedom, security and justice and of an economic union, to economic and social progress, the strengthening and the convergence of the economies within the internal market, and the well-being of individuals.

(3) Directive 95/46/EC of the European Parliament and of the Council seeks to harmonise the protection of fundamental rights and freedoms of natural persons in respect of processing activities and to guarantee the free flow of personal data between Member States.

(3a) The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced with other fundamental rights, in accordance with the principle of proportionality. This Regulation respects all fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union as enshrined in the Treaties, notably the right to respect for private and family life, home and communications, the right to the protection of personal data, the freedom of thought, conscience and religion, the freedom of expression and information, the freedom to conduct a business, the right to an effective remedy and to a fair trial as well as cultural, religious and linguistic diversity.

(4) The economic and social integration resulting from the functioning of the internal market has led to a substantial increase in cross-border flows. The exchange of data between public and private actors, including individuals, associations and undertakings across the Union has increased. National authorities in the Member States are being called upon by Union law to co-operate and exchange personal data so as to be able to perform their duties or carry out tasks on behalf of an authority in another Member State.

(5) Rapid technological developments and globalisation have brought new challenges for the protection of personal data. The scale of data sharing and collecting has increased spectacularly. Technology allows both private companies and public authorities to make use of personal data on an unprecedented scale in order to pursue their activities. Individuals increasingly make personal information available publicly and globally. Technology has transformed both the economy and social life, and should further facilitate the free flow of data within the Union and the transfer to third countries and international organisations, while ensuring a high level of the protection of personal data.

(6) These developments require a strong and more coherent data protection framework in the Union, backed by strong enforcement, given the importance of creating the trust that will allow the digital economy to develop across the internal market. Individuals should have control of their own personal data and legal and practical certainty for individuals, economic operators and public authorities should be reinforced.

(6a) Where this Regulation provides for specifications or restrictions of its rules by Member State law, Member States may, as far as necessary for the coherence and for making the national provisions comprehensible to the persons to whom they apply, incorporate elements of the Regulation in their respective national law.

(7) The objectives and principles of Directive 95/46/EC remain sound, but it has not prevented fragmentation in the way data protection is implemented across the Union, legal uncertainty and a widespread public perception that there are significant risks for the protection of individuals associated notably with online activity. Differences in the level of protection of the rights and freedoms of individuals, notably to the right to the protection of personal data, with regard to the processing of personal data afforded in the Member States may prevent the free flow of personal data throughout the Union. These differences may therefore constitute an obstacle to the pursuit of economic activities at the level of the Union, distort competition and impede authorities in the discharge of their responsibilities under Union law. This difference in levels of protection is due to the existence of differences in the implementation and application of Directive 95/46/EC.

(8) In order to ensure a consistent and high level of protection of individuals and to remove the obstacles to flows of personal data within the Union, the level of protection of the rights and freedoms of individuals with regard to the processing of such data should be equivalent in all Member States. Consistent and homogenous application of the rules for the protection of the fundamental rights and freedoms of natural persons with regard to the processing of personal data should be ensured throughout the Union. Regarding the processing of personal data for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Member States should be allowed to maintain or introduce national provisions to further specify the application of the rules of this Regulation. In conjunction with the general and horizontal law on data protection implementing Directive 95/46/EC Member States have several sector specific laws in areas that need more specific provisions. This Regulation also provides a margin of manoeuvre for Member States to specify its rules, including for the processing of sensitive data. To this extent, this Regulation does not exclude Member State law that defines the circumstances of specific processing situations, including determining more precisely the conditions under which processing of personal data is lawful.

(9) Effective protection of personal data throughout the Union requires strengthening and detailing the rights of data subjects and the obligations of those who process and determine the processing of personal data, but also equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data and equivalent sanctions for offenders in the Member States.

(10) Article 16(2) of the Treaty mandates the European Parliament and the Council to lay down the rules relating to the protection of individuals with regard to the processing of personal data and the rules relating to the free movement of personal data.

(11) In order to ensure a consistent level of protection for individuals throughout the Union and to prevent divergences hampering the free movement of data within the internal market, a Regulation is necessary to provide legal certainty and transparency for economic operators, including micro, small and medium-sized enterprises, and to provide individuals in all Member States with the same level of legally enforceable rights and obligations and responsibilities for controllers and processors, to ensure consistent monitoring of the processing of personal data, and equivalent sanctions in all Member States as well as effective co-operation by the supervisory authorities of different Member States. The proper functioning of the internal market requires that the free movement of personal data within the Union should not be restricted or prohibited for reasons connected with the protection of individuals with regard to the processing of personal data. To take account of the specific situation of micro, small and medium-sized enterprises, this Regulation includes a number of derogations. In addition, the Union institutions and bodies, Member States and their supervisory authorities are encouraged to take account of the specific needs of micro, small and medium-sized enterprises in the application of this Regulation. The notion of micro, small and medium-sized enterprises should draw upon Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

(12) The protection afforded by this Regulation concerns natural persons, whatever their nationality or place of residence, in relation to the processing of personal data. With regard to the processing of data which concern legal persons and in particular undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person, the protection of this Regulation should not be claimed by any person.

(13) The protection of individuals should be technologically neutral and not depend on the techniques used; otherwise this would create a serious risk of circumvention. The protection of individuals should apply to processing of personal data by automated means as well as to manual processing, if the data are contained or are intended to be contained in a filing system. Files or sets of files as well as their cover pages, which are not structured according to specific criteria, should not fall within the scope of this Regulation.

(14) This Regulation does not address issues of protection of fundamental rights and freedoms or the free flow of data related to activities which fall outside the scope of Union law, such as activities concerning national security, nor does it cover the processing of personal data by the Member States when carrying out activities in relation to the common foreign and security policy of the Union.

(14a) Regulation (EC) No 45/2001 applies to the processing of personal data by the Union institutions, bodies, offices and agencies. Regulation (EC) No 45/2001 and other Union legal instruments applicable to such processing of personal data should be adapted to the principles and rules of this Regulation and applied in the light of this Regulation. In order to provide a strong and coherent data protection framework in the Union, the necessary adaptations of Regulation (EC) No 45/2001 should follow after the adoption of this Regulation, in order to allow application at the same time as this Regulation.

(15) This Regulation should not apply to processing of personal data by a natural person in the course of a purely personal or household activity and thus without a connection with a professional or commercial activity. Personal and household activities could include correspondence and the holding of addresses, or social networking and on-line activity undertaken within the context of such personal and household activities. However, this Regulation should apply to controllers or processors which provide the means for processing personal data for such personal or household activities.

(16) The protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and the free movement of such data is subject of a specific legal instrument at Union level. Therefore, this Regulation should not apply to the processing activities for those purposes. However, data processed by public authorities under this Regulation when used for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties should be governed by the more specific legal instrument at Union level (Directive XX/YYY). Member States may entrust competent authorities within the meaning of Directive XX/YYY with other tasks which are not necessarily carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, fall within the scope of this Regulation. With regard to the processing of personal data by those competent authorities for purposes falling within scope of the General Data Protection Regulation, Member States may maintain or introduce more specific provisions to adapt the application of the rules of the General Data Protection Regulation. Such provisions may determine more precisely specific requirements for processing of personal data by those competent authorities for those other purposes, taking into account the constitutional, organisational and administrative structure of the respective Member State. When processing of personal data by private bodies falls within the scope of this Regulation, this Regulation should provide for the possibility for Member States under specific conditions to restrict by law certain obligations and rights when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific important interests including public security and the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. This is relevant for instance in the framework of anti-money laundering or the activities of forensic laboratories.

(16a) While this Regulation applies also to the activities of courts and other judicial authorities, Union or Member State law could specify the processing operations and processing procedures in relation to the processing of personal data by courts and other judicial authorities. The competence of the supervisory authorities should not cover the processing of personal data when courts are acting in their judicial capacity, in order to safeguard the independence of the judiciary in the performance of its judicial tasks, including its decision-making. Supervision of such data processing operations may be entrusted to specific bodies within the judicial system of the Member State, which should in particular control compliance with the rules of this Regulation, promote the awareness of the judiciary of their obligations under this Regulation and deal with complaints in relation to such processing.

(17) This Regulation should be without prejudice to the application of Directive 2000/31/EC of the European Parliament and of the Council, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive. That Directive seeks to contribute to the proper functioning of the internal market by ensuring the free movement of information society services between Member States.

(18) (…)

(19) Any processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union should be carried out in accordance with this Regulation, regardless of whether the processing itself takes place within the Union or not. Establishment implies the effective and real exercise of activity through stable arrangements. The legal form of such arrangements, whether through a branch or a subsidiary with a legal personality, is not the determining factor in this respect.

(20) In order to ensure that individuals are not deprived of the protection to which they are entitled under this Regulation, the processing of personal data of data subjects who are in the Union by a controller or a processor not established in the Union should be subject to this Regulation where the processing activities are related to the offering of goods or services to such data subjects irrespective of whether connected to a payment or not. In order to determine whether such a controller or processor is offering goods or services to data subjects who are in the Union, it should be ascertained whether it is apparent that the controller is envisaging the offering of services to data subjects in one or more Member States in the Union. Whereas the mere accessibility of the controller's or an intermediary's website in the Union or of an email address and of other contact details or the use of a language generally used in the third country where the controller is established, is insufficient to ascertain such intention, factors such as the use of a language or a currency generally used in one or more Member States with the possibility of ordering goods and services in that other language, and/or the mentioning of customers or users who are in the Union, may make it apparent that the controller envisages offering goods or services to such data subjects in the Union.

(21) The processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union should also be subject to this Regulation when it is related to the monitoring of the behaviour of such data subjects as far as their behaviour takes places within the European Union. In order to determine whether a processing activity can be considered to monitor the behaviour of data subjects, it should be ascertained whether individuals are tracked on the Internet including potential subsequent use of data processing techniques which consist of profiling an individual, particularly in order to take decisions concerning her or him or for analysing or predicting her or his personal preferences, behaviours and attitudes.

(22) Where the national law of a Member State applies by virtue of public international law, this Regulation should also apply to a controller not established in the Union, such as in a Member State's diplomatic mission or consular post.

(23) The principles of data protection should apply to any information concerning an identified or identifiable natural person. Data which has undergone pseudonymisation, which could be attributed to a natural person by the use of additional information, should be considered as information on an identifiable natural person. To determine whether a person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by any other person to identify the individual directly or indirectly. To ascertain whether means are reasonable likely to be used to identify the individual, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration both available technology at the time of the processing and technological development. The principles of data protection should therefore not apply to anonymous information, that is information which does not relate to an identified or identifiable natural person or to data rendered anonymous in such a way that the data subject is not or no longer identifiable. This Regulation does therefore not concern the processing of such anonymous information, including for statistical and research purposes.

(23aa) This Regulation should not apply to data of deceased persons. Member States may provide for rules regarding the processing of data of deceased persons.

(23a) The application of pseudonymisation to personal data can reduce the risks for the data subjects concerned and help controllers and processors meet their data protection obligations. The explicit introduction of ‘pseudonymisation’ through the articles of this Regulation is thus not intended to preclude any other measures of data protection.

(23b) (…)

(23c) In order to create incentives for applying pseudonymisation when processing personal data, measures of pseudonymisation whilst allowing general analysis should be possible within the same controller when the controller has taken technical and organisational measures necessary to ensure, for the respective processing, that the provisions of this Regulation are implemented, and ensuring that additional information for attributing the personal data to a specific data subject is kept separately. The controller processing the data shall also refer to authorised persons within the same controller.

(24) Individuals may be associated with online identifiers provided by their devices, applications, tools and protocols, such as Internet Protocol addresses, cookie identifiers or other identifiers such as Radio Frequency Identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the individuals and identify them.

(24c new) Public authorities to whom data are disclosed in compliance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities, responsible for the regulation and supervision of securities markets, may not be regarded as recipients if they receive data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law. The requests for disclosure sent by the public authorities should always be written, reasoned and occasional and should not concern the entirety of a filing system or lead to the interconnection of filing systems. The processing of these data by those public authorities should be in compliance with the applicable data protection rules according to the purposes of the processing.

(25) Consent should be given by a clear affirmative action establishing a freely given, specific, informed and unambiguous indication of the data subject's agreement to personal data relating to him or her being processed, such as by a written, including electronic, or oral statement. This could include ticking a box when visiting an Internet website, choosing technical settings for information society services or by any other statement or conduct which clearly indicates in this context the data subject's acceptance of the proposed processing of their personal data. Silence, pre-ticked boxes or inactivity should therefore not constitute consent. Consent should cover all processing activities carried out for the same purpose or purposes. When the processing has multiple purposes, consent should be granted for all of the processing purposes. If the data subject's consent is to be given following an electronic request, the request must be clear, concise and not unnecessarily disruptive to the use of the service for which it is provided.

(25aa) It is often not possible to fully identify the purpose of data processing for scientific research purposes at the time of data collection. Therefore data subjects should be allowed to give their consent to certain areas of scientific research when in keeping with recognised ethical standards for scientific research. Data subjects should have the opportunity to give their consent only to certain areas of research or parts of research projects to the extent allowed by the intended purpose.

(25a) Genetic data should be defined as personal data relating to the genetic characteristics of an individual which have been inherited or acquired as they result from an analysis of a biological sample from the individual in question, in particular by chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis or analysis of any other element enabling equivalent information to be obtained.

(26) Personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject; including information about the individual collected in the course of the registration for and the provision of health care services as referred to in Directive 2011/24/EU to the individual; a number, symbol or particular assigned to an individual to uniquely identify the individual for health purposes; information derived from the testing or examination of a body part or bodily substance, including genetic data and biological samples; or any information on e.g. a disease, disability, disease risk, medical history, clinical treatment, or the actual physiological or biomedical state of the data subject independent of its source, such as e.g. from a physician or other health professional, a hospital, a medical device, or an in vitro diagnostic test.

(27) The main establishment of a controller in the Union should be the place of its central administration in the Union, unless the decisions on the purposes and means of processing of personal data are taken in another establishment of the controller in the Union. In this case the latter should be considered as the main establishment. The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes and means of processing through stable arrangements. This criterion should not depend on whether the processing of personal data is actually carried out at that location; the presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute such main establishment and are therefore not determining criteria for a main establishment. The main establishment of the processor should be the place of its central administration in the Union and, if it has no central administration in the Union, the place where the main processing activities take place in the Union. In cases involving both the controller and the processor, the competent lead supervisory authority should remain the supervisory authority of the Member State where the controller has its main establishment but the supervisory authority of the processor should be considered as a supervisory authority concerned and participate to the cooperation procedure provided for by this Regulation. In any case, the supervisory authorities of the Member State or Member States where the processor has one or more establishments should not be considered as concerned supervisory authorities when the draft decision concerns only the controller. Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered as the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking.

(28) A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exercise a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. A central undertaking which controls the processing of personal data in undertakings affiliated to it forms together with these undertakings an entity which may be treated as "group of undertakings".

(29) Children deserve specific protection of their personal data, as they may be less aware of risks, consequences, safeguards and their rights in relation to the processing of personal data. This concerns especially the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of child data when using services offered directly to a child. The consent of the holder of parental responsibility should not be necessary in the context of preventive or counselling services offered directly to a child.

(30) Any processing of personal data should be lawful and fair. It should be transparent for the individuals that personal data concerning them are collected, used, consulted or otherwise processed and to which extent the data are processed or will be processed. The principle of transparency requires that any information and communication relating to the processing of those data should be easily accessible and easy to understand, and that clear and plain language is used. This concerns in particular the information of the data subjects on the identity of the controller and the purposes of the processing and further information to ensure fair and transparent processing in respect of the individuals concerned and their right to get confirmation and communication of personal data being processed concerning them. Individuals should be made aware on risks, rules, safeguards and rights in relation to the processing of personal data and how to exercise his or her rights in relation to the processing. In particular, the specific purposes for which the data are processed should be explicit and legitimate and determined at the time of the collection of the data. The data should be adequate, relevant and limited to what is necessary for the purposes for which the data are processed; this requires in particular ensuring that the period for which the data are stored is limited to a strict minimum. Personal data should only be processed if the purpose of the processing could not reasonably be fulfilled by other means. In order to ensure that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review. Every reasonable step should be taken to ensure that personal data which are inaccurate are rectified or deleted. Personal data should be processed in a manner that ensures appropriate security and confidentiality of the personal data, including for preventing unauthorised access to or the use of personal data and the equipment used for the processing.

(31) In order for processing to be lawful, personal data should be processed on the basis of the consent of the person concerned or some other legitimate basis, laid down by law, either in this Regulation or in other Union or Member State law as referred to in this Regulation, including the necessity for compliance with the legal obligation to which the controller is subject or the necessity for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.

(31a) Wherever this Regulation refers to a legal basis or a legislative measure, this does not necessarily require a legislative act adopted by a parliament, without prejudice to requirements pursuant the constitutional order of the Member State concerned, however such legal basis or a legislative measure should be clear and precise and its application foreseeable for those subject to it as required by the case law of the Court of Justice of the European Union and the European Court of Human Rights.

(32) Where processing is based on the data subject's consent, the controller should be able to demonstrate that the data subject has given the consent to the processing operation. In particular in the context of a written declaration on another matter, safeguards should ensure that the data subject is aware that and the extent to which consent is given. In line with Council Directive 93/13/EEC[1] a declaration of consent pre-formulated by the controller should be provided in an intelligible and easily accessible form, using clear and plain language and it should not contain unfair terms. For consent to be informed the data subject should be aware at least of the identity of the controller and the purposes of the processing for which the personal data are intended; consent should not be regarded as freely-given if the data subject has no genuine and free choice and is unable to refuse or withdraw consent without detriment.

(33) (…)

(34) In order to safeguard that consent has been freely-given, consent should not provide a valid legal ground for the processing of personal data in a specific case, where there is a clear imbalance between the data subject and the controller, in particular where the controller is a public authority and this makes it unlikely that consent was given freely in all the circumstances of that specific situation. Consent is presumed not to be freely given, if it does not allow separate consent to be given to different data processing operations despite it is appropriate in the individual case, or if the performance of a contract, including the provision of a service is made dependent on the consent despite this is not necessary for such performance.

(35) Processing should be lawful where it is necessary in the context of a contract or the intended entering into a contract.

(35a) (…)

(36) Where processing is carried out in compliance with a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority, the processing should have a basis in Union law, or in the national law of a Member State. This Regulation does not require that a specific law is necessary for each individual processing. A law as a basis for several processing operations based on a legal obligation to which the controller is subject or where processing is necessary for the performance of a task carried out in the public interest or in the exercise of an official authority may be sufficient. It should be also for Union or Member State law to determine the purpose of processing. Furthermore, this basis could specify the general conditions of the Regulation governing the lawfulness of data processing, determine specifications for determining the controller, the type of data which are subject to the processing, the data subjects concerned, the entities to which the data may be disclosed, the purpose limitations, the storage period and other measures to ensure lawful and fair processing. It should also be for Union or Member State law to determine whether the controller performing a task carried out in the public interest or in the exercise of official authority should be a public authority or another natural or legal person governed by public law, or by private law such as a professional association, where grounds of public interest so justify including for health purposes, such as public health and social protection and the management of health care services.

(37) The processing of personal data should equally be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's life or that of another person. Personal data should only be processed based on the vital interest of another natural person in principle where the processing cannot be manifestly based on another legal basis. Some types of data processing may serve both important grounds of public interest and the vital interests of the data subject as for instance when processing is necessary for humanitarian purposes, including for monitoring epidemic and its spread or in situations of humanitarian emergencies, in particular in situations of natural and man-made disasters.

(38) The legitimate interests of a controller, including of a controller to which the data may be disclosed, or of a third party may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on the relationship with the controller. Legitimate interest could exist for example when there is a relevant and appropriate relationship between the data subject and the controller in situations such as the data subject being a client or in the service of the controller. At any rate the existence of a legitimate interest would need careful assessment including whether a data subject can reasonably expect at the time and in the context of the collection of the data that processing for this purpose may take place. The interests and fundamental rights of the data subject could in particular override the interest of the data controller where personal data are processed in circumstances where data subjects do not reasonably expect further processing. Given that it is for the legislator to provide by law the legal basis for public authorities to process data, this legal ground should not apply for the processing by public authorities in the performance of their tasks. The processing of personal data strictly necessary for the purposes of preventing fraud also constitutes a legitimate interest of the data controller concerned. The processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest.

(38a) Controllers that are part of a group of undertakings or institution affiliated to a central body may have a legitimate interest to transmit personal data within the group of undertakings for internal administrative purposes, including the processing of clients' or employees' personal data. The general principles for the transfer of personal data, within a group of undertakings, to an undertaking located in a third country remain unaffected.

(39) The processing of data to the extent strictly necessary and proportionate for the purposes of ensuring network and information security, i.e. the ability of a network or an information system to resist, at a given level of confidence, accidental events or unlawful or malicious actions that compromise the availability, authenticity, integrity and confidentiality of stored or transmitted data, and the security of the related services offered by, or accessible via, these networks and systems, by public authorities, Computer Emergency Response Teams – CERTs, Computer Security Incident Response Teams – CSIRTs, providers of electronic communications networks and services and by providers of security technologies and services, constitutes a legitimate interest of the data controller concerned. This could, for example, include preventing unauthorised access to electronic communications networks and malicious code distribution and stopping 'denial of service' attacks and damage to computer and electronic communication systems.

(40) The processing of personal data for other purposes than the purposes for which the data have been initially collected should be only allowed where the processing is compatible with those purposes for which the data have been initially collected. In such case no separate legal basis is required other than the one which allowed the collection of the data. If the processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, Union law or Member State law may determine and specify the tasks and purposes for which the further processing shall be regarded as compatible and lawful. The further processing for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes should be considered as compatible lawful processing operations. The legal basis provided by Union or Member State law for the processing of personal data may also provide a legal basis for further processing. In order to ascertain whether a purpose of further processing is compatible with the purpose for which the data are initially collected, the controller, after having met all the requirements for the lawfulness of the original processing, should take into account inter alia any link between those purposes and the purposes of the intended further processing, the context in which the data have been collected, in particular the reasonable expectations of data subjects based on their relationship with the controller as to their further use, the nature of the personal data, the consequences of the intended further processing for data subjects, and the existence of appropriate safeguards in both the original and intended further processing operations. Where the data subject has given consent or the processing is based on Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard, in particular, important objectives of general public interests, the controller should be allowed to further process the data irrespective of the compatibility of the purposes. In any case, the application of the principles set out by this Regulation and in particular the information of the data subject on those other purposes and on his or her rights including the right to object, should be ensured. Indicating possible criminal acts or threats to public security by the controller and transmitting the relevant data in individual cases or in several cases relating to the same criminal act or threats to public security to a competent authority should be regarded as being in the legitimate interest pursued by the controller. However such transmission in the legitimate interest of the controller or further processing of personal data should be prohibited if the processing is not compatible with a legal, professional or other binding obligation of secrecy.

(41) Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms, deserve specific protection as the context of their processing may create important risks for the fundamental rights and freedoms. These data should also include personal data revealing racial or ethnic origin, whereby the use of the term 'racial origin' in this Regulation does not imply an acceptance by the Union of theories which attempt to determine the existence of separate human races. The processing of photographs will not systematically be a sensitive processing, as they will only be covered by the definition of biometric data when being processed through a specific technical means allowing the unique identification or authentication of an individual. Such data should not be processed, unless processing is allowed in specific cases set out in this Regulation, taking into account that Member States law may lay down specific provisions on data protection in order to adapt the application of the rules of this Regulation for compliance with a legal obligation or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. In addition to the specific requirements for such processing, the general principles and other rules of this Regulation should apply, in particular as regards the conditions for lawful processing. Derogations from the general prohibition for processing such special categories of personal data should be explicitly provided, inter alia where the data subject gives his or her explicit consent or in respect of specific needs in particular where the processing is carried out in the course of legitimate activities by certain associations or foundations the purpose of which is to permit the exercise of fundamental freedoms.

(42) Derogating from the prohibition on processing sensitive categories of data should also be allowed when provided for in Union or Member State law and subject to suitable safeguards, so as to protect personal data and other fundamental rights, where grounds of public interest so justify, in particular processing data in the field of of employment law, social protection law including pensions and for health security, monitoring and alert purposes, the prevention or control of communicable diseases and other serious threats to health. This may be done for health purposes, including public health and the management of health-care services, especially in order to ensure the quality and cost-effectiveness of the procedures used for settling claims for benefits and services in the health insurance system, or for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes. A derogation should also allow processing of such data where necessary for the establishment, exercise or defence of legal claims, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure.

(42a) Special categories of personal data which deserve higher protection, may only be processed for health-related purposes where necessary to achieve those purposes for the benefit of individuals and society as a whole, in particular in the context of the management of health or social care services and systems including the processing by the management and central national health authorities of such data for the purpose of quality control, management information and the general national and local supervision of the health or social care system, and ensuring continuity of health or social care and cross-border healthcare or health security, monitoring and alert purposes, or for archiving purposes in the public interest or scientific and historical research purposes or statistical purposes based on Union or Member State law which has to meet an objective of public interest, as well as for studies conducted in the public interest in the area of public health. Therefore this Regulation should provide for harmonised conditions for the processing of special categories of personal data concerning health, in respect of specific needs, in particular where the processing of these data is carried out for certain health-related purposes by persons subject to a legal obligation of professional secrecy. Union or Member State law should provide for specific and suitable measures so as to protect the fundamental rights and the personal data of individuals. Member States should be allowed to maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or health data. However, this should not hamper the free flow of data within the Union when those conditions apply to cross-border processing of such data.

(42b) The processing of special categories of personal data may be necessary for reasons of public interest in the areas of public health without consent of the data subject. This processing is subject to suitable and specific measures so as to protect the rights and freedoms of individuals. In that context, ‘public health’ should be interpreted as defined in Regulation (EC) No 1338/2008 of the European Parliament and of the Council of 16 December 2008 on Community statistics on public health and health and safety at work, meaning all elements related to health, namely health status, including morbidity and disability, the determinants having an effect on that health status, health care needs, resources allocated to health care, the provision of, and universal access to, health care as well as health care expenditure and financing, and the causes of mortality. Such processing of personal data concerning health for reasons of public interest should not result in personal data being processed for other purposes by third parties such as employers, insurance and banking companies.

(43) Moreover, the processing of personal data by official authorities for achieving aims, laid down in constitutional law or international public law, of officially recognised religious associations is carried out on grounds of public interest.

(44) Where in the course of electoral activities, the operation of the democratic system requires in a Member State that political parties compile data on people's political opinions, the processing of such data may be permitted for reasons of public interest, provided that appropriate safeguards are established.

(45) If the data processed by a controller do not permit the controller to identify a natural person, the data controller should not be obliged to acquire additional information in order to identify the data subject for the sole purpose of complying with any provision of this Regulation. However, the controller should not refuse to take additional information provided by the data subject in order to support the exercise of his or her rights. Identification should include the digital identification of a data subject, for example through authentication mechanism such as the same credentials, used by the data subject to log-into the on-line service offered by the data controller.

(46) The principle of transparency requires that any information addressed to the public or to the data subject should be concise, easily accessible and easy to understand, and that clear and plain language and, additionally, where appropriate, visualisation is used. This information could be provided in electronic form, for example, when addressed to the public, through a website. This is in particular relevant where in situations, such as online advertising, the proliferation of actors and the technological complexity of practice make it difficult for the data subject to know and understand if personal data relating to him or her are being collected, by whom and for what purpose. Given that children deserve specific protection, any information and communication, where processing is addressed to a child, should be in such a clear and plain language that the child can easily understand.

(47) Modalities should be provided for facilitating the data subject's exercise of their rights provided by this Regulation, including mechanisms to request and if applicable obtain, free of charge, in particular access to data, rectification, erasure and to exercise the right to object. Thus the controller should also provide means for requests to be made electronically, especially where personal data are processed by electronic means. The controller should be obliged to respond to requests of the data subject without undue delay and at the latest within one month and give reasons where the controller does not intend to comply with the data subject's request.

(48) The principles of fair and transparent processing require that the data subject should be informed of the existence of the processing operation and its purposes. The controller should provide the data subject with any further information necessary to guarantee fair and transparent processing having regard to the specific circumstances and context in which the personal data are processed. Furthermore the data subject should be informed about the existence of profiling, and the consequences of such profiling. Where the data are collected from the data subject, the data subject should also be informed whether he or she is obliged to provide the data and of the consequences, in cases he or she does not provide such data. This information may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible way a meaningful overview of the intended processing. Where the icons are presented electronically, they should be machine-readable.

(49) The information in relation to the processing of personal data relating to the data subject should be given to him or her at the time of collection, or, where the data are not obtained from the data subject but from another source, within a reasonable period, depending on the circumstances of the case. Where data can be legitimately disclosed to another recipient, the data subject should be informed when the data are first disclosed to the recipient. Where the controller intends to process the data for a purpose other than the one for which the data were collected the controller should provide the data subject prior to that further processing with information on that other purpose and other necessary information. Where the origin of the data could not be provided to the data subject because various sources have been used, the information should be provided in a general manner.

(50) However, it is not necessary to impose this obligation where the data subject already possesses this information, or where the recording or disclosure of the data is expressly laid down by law, or where the provision of information to the data subject proves impossible or would involve disproportionate efforts. The latter could be particularly the case where processing is for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes; in this regard, the number of data subjects, the age of the data, and any appropriate safeguards adopted may be taken into consideration.

(51) A natural person should have the right of access to data which has been collected concerning him or her, and to exercise this right easily and at reasonable intervals, in order to be aware of and verify the lawfulness of the processing. This includes the right for individuals to have access to their personal data concerning their health, for example the data in their medical records containing such information as diagnosis, examination results, assessments by treating physicians and any treatment or interventions provided. Every data subject should therefore have the right to know and obtain communication in particular for what purposes the data are processed, where possible for what period, which recipients receive the data, what is the logic involved in any automatic data processing and what might be, at least when based on profiling, the consequences of such processing. Where possible, the controller may provide remote access to a secure system which would provide the data subject with direct access to his or her personal data. This right should not adversely affect the rights and freedoms of others, including trade secrets or intellectual property and in particular the copyright protecting the software. However, the result of these considerations should not be that all information is refused to the data subject. Where the controller processes a large quantity of information concerning the data subject, the controller may request that before the information is delivered the data subject specify to which information or to which processing activities the request relates.

(52) The controller should use all reasonable measures to verify the identity of a data subject who requests access, in particular in the context of online services and online identifiers. A controller should not retain personal data for the sole purpose of being able to react to potential requests.

(53) A natural person should have the right to have personal data concerning them rectified and a 'right to be forgotten' where the retention of such data is not in compliance with this Regulation or with Union or Member State law to which the controller is subject. In particular, data subjects should have the right that their personal data are erased and no longer processed, where the data are no longer necessary in relation to the purposes for which the data are collected or otherwise processed, where data subjects have withdrawn their consent for processing or where they object to the processing of personal data concerning them or where the processing of their personal data otherwise does not comply with this Regulation. This right is in particular relevant, when the data subject has given his or her consent as a child, when not being fully aware of the risks involved by the processing, and later wants to remove such personal data especially on the Internet. The data subject should be able to exercise this right notwithstanding the fact that he or she is no longer a child. However, the further retention of the data should be lawful where it is necessary, for exercising the right of freedom of expression and information, for compliance with a legal obligation, for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller, for reasons of public interest in the area of public health, for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes or for the establishment, exercise or defence of legal claims.

(54) To strengthen the 'right to be forgotten' in the online environment, the right to erasure should also be extended in such a way that a controller who has made the personal data public should be obliged to inform the controllers which are processing such data to erase any links to, or copies or replications of that personal data. To ensure the above mentioned information, the controller should take reasonable steps, taking into account available technology and the means available to the controller, including technical measures, to inform the controllers, which are processing the data, of the data subject's request.

(54a) Methods to restrict processing of personal data could include, inter alia, temporarily moving the selected data to another processing system or making the selected data unavailable to users or temporarily removing published data from a website. In automated filing systems the restriction of processing of personal data should in principle be ensured by technical means in such a way that the data is not subject to further processing operations and cannot be changed anymore; the fact that the processing of personal data is restricted should be indicated in the system in such a way that it is clear that the processing of the personal data is restricted.

(55) To further strengthen the control over their own data, where the processing of personal data is carried out by automated means, the data subject should also be allowed to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured, commonly used, machine-readable and interoperable format and transmit it to another controller. Data controllers should be encouraged to develop interoperable formats that enable data portability. This right should apply where the data subject provided the personal data based on his or her consent or the processing is necessary for the performance of a contract. It should not apply where processing is based on another legal ground other than consent or contract. By its very nature this right should not be exercised against controllers processing data in the exercise of their public duties. It should therefore in particular not apply where processing of the personal data is necessary for compliance with a legal obligation to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of an official authority vested in the controller. The data subject's right to transmit or receive personal data concerning him or her does not create an obligation for the controllers to adopt or maintain data processing systems which are technically compatible. Where, in a certain set of personal data, more than one data subject is concerned, the right to receive the data should be without prejudice to the rights of other data subjects in accordance with this Regulation. This right should also not prejudice the right of the data subject to obtain the erasure of personal data and the limitations of that right as set out in this Regulation and should in particular not imply the erasure of personal data concerning the data subject which have been provided by him or her for the performance of a contract, to the extent and as long as the data are necessary for the performance of that contract. Where technically feasible, the data subject should have the right to obtain that the data is transmitted directly from controller to controller.

(56) In cases where personal data might lawfully be processed because processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or on grounds of the legitimate interests of a controller or a third party, any data subject should nevertheless be entitled to object to the processing of any data relating to their particular situation. It should be for the controller to demonstrate that their compelling legitimate interests may override the interests or the fundamental rights and freedoms of the data subject.

(57) Where personal data are processed for the purposes of direct marketing, the data subject should have the right to object to such processing, including profiling to the extent that it is related to such direct marketing, whether the initial or further processing, at any time and free of charge. This right shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.

(58) The data subject should have the right not to be subject to a decision, which may include a measure, evaluating personal aspects relating to him or her which is based solely on automated processing, which produces legal effects concerning him or her or similarly significantly affects him or her, like automatic refusal of an on-line credit application or e-recruiting practices without any human intervention. Such processing includes also 'profiling' consisting in any form of automated processing of personal data evaluating personal aspects relating to a natural person, in particular to analyse or predict aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements as long as it produces legal effects concerning him or her or similarly significantly affects him or her. However, decision making based on such processing, including profiling, should be allowed when expressly authorised by Union or Member State law, to which the controller is subject, including for fraud and tax evasion monitoring and prevention purposes conducted in accordance with the regulations, standards and recommendations of EU institutions or national oversight bodies and to ensure the security and reliability of a service provided by the controller, or necessary for the entering or performance of a contract between the data subject and a controller, or when the data subject has given his or her explicit consent. In any case, such processing should be subject to suitable safeguards, including specific information of the data subject and the right to obtain human intervention and that such measure should not concern a child, to express his or her point of view, to get an explanation of the decision reached after such assessment and the right to contest the decision. In order to ensure fair and transparent processing in respect of the data subject, having regard to the specific circumstances and context in which the personal data are processed, the controller should use adequate mathematical or statistical procedures for the profiling, implement technical and organisational measures appropriate to ensure in particular that factors which result in data inaccuracies are corrected and the risk of errors is minimized, secure personal data in a way which takes account of the potential risks involved for the interests and rights of the data subject and which prevents inter alia discriminatory effects against individuals on the basis of race or ethnic origin, political opinions, religion or beliefs, trade union membership, genetic or health status, sexual orientation or that result in measures having such effect. Automated decision making and profiling based on special categories of personal data should only be allowed under specific conditions.

(58a) Profiling as such is subject to the rules of this Regulation governing processing of personal data, such as legal grounds of processing or data protection principles. The European Data Protection Board should have the possibility to issue guidance in this context.

(59) Restrictions on specific principles and on the rights of information, access, rectification and erasure or on the right to data portability, the right to object, decisions based on profiling, as well as on the communication of a personal data breach to a data subject and on certain related obligations of the controllers may be imposed by Union or Member State law, as far as necessary and proportionate in a democratic society to safeguard public security, including the protection of human life especially in response to natural or man made disasters, the prevention, investigation and prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security, or of breaches of ethics for regulated professions, other public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, the keeping of public registers kept for reasons of general public interest, further processing of archived personal data to provide specific information related to the political behaviour under former totalitarian state regimes or the protection of the data subject or the rights and freedoms of others, including social protection, public health and humanitarian purposes. Those restrictions should be in compliance with requirements set out by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(60) The responsibility and liability of the controller for any processing of personal data carried out by the controller or on the controller's behalf should be established. In particular, the controller should be obliged to implement appropriate and effective measures and be able to demonstrate the compliance of processing activities with this Regulation, including the effectiveness of the measures. These measures should take into account the nature, scope, context and purposes of the processing and the risk for the rights and freedoms of individuals.

(60a) Such risks, of varying likelihood and severity, may result from data processing which could lead to physical, material or moral damage, in particular where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of data protected by professional secrecy, unauthorized reversal of pseudonymisation, or any other significant economic or social disadvantage; or where data subjects might be deprived of their rights and freedoms or from exercising control over their personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade-union membership, and the processing of genetic data or data concerning health or sex life or criminal convictions and offences or related security measures; where personal aspects are evaluated, in particular analysing or prediction of aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable individuals, in particular of children, are processed; where processing involves a large amount of personal data and affects a large number of data subjects.

(60b) The likelihood and severity of the risk for the rights and freedoms of the data subject should be determined in function of the nature, scope, context and purposes of the data processing. Risk should be evaluated based on an objective assessment, by which it is established whether data processing operations involve a risk or a high risk.

(60c) Guidance for the implementation of appropriate measures, and for demonstrating the compliance by the controller or processor, especially as regards the identification of the risk related to the processing, their assessment in terms of their origin, nature, likelihood and severity, and the identification of best practices to mitigate the risk, could be provided in particular by approved codes of conduct, approved certifications, guidelines of the European Data Protection Board or through the indications provided by a data protection officer. The European Data Protection Board may also issue guidelines on processing operations that are considered to be unlikely to result in a high risk for the rights and freedoms of individuals and indicate what measures may be sufficient in such cases to address such risk.

(61) The protection of the rights and freedoms of individuals with regard to the processing of personal data require that appropriate technical and organisational measures are taken to ensure that the requirements of this Regulation are met. In order to be able to demonstrate compliance with this Regulation, the controller should adopt internal policies and implement measures, which meet in particular the principles of data protection by design and data protection by default. Such measures could consist inter alia of minimising the processing of personal data, pseudonymising personal data as soon as possible, transparency with regard to the functions and processing of personal data, enabling the data subject to monitor the data processing, enabling the controller to create and improve security features. When developing, designing, selecting and using applications, services and products that are either based on the processing of personal data or process personal data to fulfil their task, producers of the products, services and applications should be encouraged to take into account the right to data protection when developing and designing such products, services and applications and, with due regard to the state of the art, to make sure that controllers and processors are able to fulfil their data protection obligations.The principles of data protection by design and by default should also be taken into consideration in the context of public tenders.

(62) The protection of the rights and freedoms of data subjects as well as the responsibility and liability of controllers and processors, also in relation to the monitoring by and measures of supervisory authorities, requires a clear attribution of the responsibilities under this Regulation, including where a controller determines the purposes, and means of the processing jointly with other controllers or where a processing operation is carried out on behalf of a controller.

(63) Where a controller or a processor not established in the Union is processing personal data of data subjects who are in the Union whose processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union, or to the monitoring of their behaviour as far as their behaviour takes place within the Union, the controller or the processor should designate a representative, unless the processing is occasional, does not include processing, on a large scale, of special categories of data as referred to in Article 9(1) or processing of data relating to criminal convictions and offences referred to in Article 9a, and is unlikely to result in a risk for the rights and freedoms of individuals, taking into account the nature, context, scope and purposes of the processing or if the controller is a public authority or body. The representative should act on behalf of the controller or the processor and may be addressed by any supervisory authority. The representative should be explicitly designated by a written mandate of the controller or the processor to act on its behalf with regard to the latter's obligations under this Regulation. The designation of such representative does not affect the responsibility and liability of the controller or the processor under this Regulation. Such representative should perform its tasks according to the received mandate from the controller, including to cooperate with the competent supervisory authorities on any action taken in ensuring compliance with this Regulation. The designated representative should be subjected to enforcement actions in case of non-compliance by the controller.

(63a) To ensure compliance with the requirements of this Regulation in respect of the processing to be carried out by the processor on behalf of the controller, when entrusting a processor with processing activities, the controller should use only processors providing sufficient guarantees, in particular in terms of expert knowledge, reliability and resources, to implement technical and organisational measures which will meet the requirements of this Regulation, including for the security of processing. Adherence of the processor to an approved code of conduct or an approved certification mechanism may be used as an element to demonstrate compliance with the obligations of the controller. The carrying out of processing by a processor should be governed by a contract or other legal act under Union or Member State law, binding the processor to the controller, setting out the subject-matter and duration of the processing, the nature and purposes of the processing, the type of personal data and categories of data subjects, taking into account the specific tasks and responsibilities of the processor in the context of the processing to be carried out and the risk for the rights and freedoms of the data subject. The controller and processor may choose to use an individual contract or standard contractual clauses which are adopted either directly by the Commission or by a supervisory authority in accordance with the consistency mechanism and then adopted by the Commission. After the completion of the processing on behalf of the controller, the processor should, at the choice of the controller, return or delete the personal data, unless there is a requirement to store the data under Union or Member State law to which the processor is subject.

(64) (…)

(65) In order to demonstrate compliance with this Regulation, the controller or processor should maintain records of processing activities under its responsibility. Each controller and processor should be obliged to co-operate with the supervisory authority and make these records, on request, available to it, so that it might serve for monitoring those processing operations.

(66) In order to maintain security and to prevent processing in breach of this Regulation, the controller or processor should evaluate the risks inherent to the processing and implement measures to mitigate those risks, such as encryption. These measures should ensure an appropriate level of security including confidentiality, taking into account the state of the art and the costs of implementation in relation to the risks and the nature of the personal data to be protected. In assessing data security risk, consideration should be given to the risks that are presented by data processing, such as accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed, which may in particular lead to physical, material or moral damage.

(66a) In order to enhance compliance with this Regulation in cases where the processing operations are likely to result in a high risk for the rights and freedoms of individuals, the controller should be responsible for the carrying out of a data protection impact assessment to evaluate, in particular, the origin, nature, particularity and severity of this risk. The outcome of the assessment should be taken into account when determining the appropriate measures to be taken in order to demonstrate that the processing of personal data is in compliance with this Regulation. Where a data protection impact assessment indicates that processing operations involve a high risk which the controller cannot mitigate by appropriate measures in terms of available technology and costs of implementation, a consultation of the supervisory authority should take place prior to the processing.

(67) A personal data breach may, if not addressed in an adequate and timely manner, result in physical, material or moral damage to individuals such as loss of control over their personal data or limitation of their rights, discrimination, identity theft or fraud, financial loss, unauthorized reversal of pseudonymisation, damage to the reputation, loss of confidentiality of data protected by professional secrecy or any other economic or social disadvantage to the individual concerned. Therefore, as soon as the controller becomes aware that a personal data breach has occurred, the controller should without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the competent supervisory authority, unless the controller is able to demonstrate, in accordance with the accountability principle, that the personal data breach is unlikely to result in a risk for the rights and freedoms of individuals. Where this cannot be achieved within 72 hours, an explanation of the reasons for the delay should accompany the notification and information may be provided in phases without undue further delay.

(67a new) The individuals should be notified without undue delay if the personal data breach is likely to result in a high risk for for the rights and freedoms of individuals, in order to allow them to take the necessary precautions. The notification should describe the nature of the personal data breach as well as recommendations for the individual concerned to mitigate potential adverse effects. Notifications to data subjects should be made as soon as reasonably feasible, and in close cooperation with the supervisory authority and respecting guidance provided by it or other relevant authorities (e.g. law enforcement authorities). For example, the need to mitigate an immediate risk of damage would call for a prompt notification of data subjects whereas the need to implement appropriate measures against continuing or similar data breaches may justify a longer delay.

(68) It must be ascertained whether all appropriate technological protection and organisational measures have been implemented to establish immediately whether a personal data breach has taken place and to inform promptly the supervisory authority and the data subject. The fact that the notification was made without undue delay should be established taking into account in particular the nature and gravity of the personal data breach and its consequences and adverse effects for the data subject. Such notification may result in an intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation.

(68a) (…)

(69) In setting detailed rules concerning the format and procedures applicable to the notification of personal data breaches, due consideration should be given to the circumstances of the breach, including whether or not personal data had been protected by appropriate technical protection measures, effectively limiting the likelihood of identity fraud or other forms of misuse. Moreover, such rules and procedures should take into account the legitimate interests of law enforcement authorities in cases where early disclosure could unnecessarily hamper the investigation of the circumstances of a breach.

(70) Directive 95/46/EC provided for a general obligation to notify processing of personal data to the supervisory authorities. While this obligation produces administrative and financial burdens, it did not in all cases contribute to improving the protection of personal data. Therefore such indiscriminate general notification obligations should be abolished, and replaced by effective procedures and mechanisms which focus instead on those types of processing operations which are likely to result in a high risk to the rights and freedoms of individuals by virtue of their nature, scope, context and purposes. Such types of processing operations may be those which in particular, involve using new technologies, or are of a new kind and where no data protection impact assessment has been carried out before by the controller, or where they become necessary in the light of the time that has elapsed since the initial processing.

(70a) In such cases, a data protection impact assessment should be carried out by the controller prior to the processing in order to assess the particular likelihood and severity of the high risk, taking into account the nature, scope, context and purposes of the processing and the sources of the risk, which should include in particular the envisaged measures, safeguards and mechanisms for mitigating that risk and for ensuring the protection of personal data and for demonstrating the compliance with this Regulation.

(71) This should in particular apply to large-scale processing operations, which aim at processing a considerable amount of personal data at regional, national or supranational level and which could affect a large number of data subjects and which are likely to result in a high risk, for example, on account of their sensitivity, where in accordance with the achieved state of technological knowledge a new technology is used on a large scale as well as to other processing operations which result in a high risk for the rights and freedoms of data subjects, in particular where those operations render it more difficult for data subjects to exercise their rights. A data protection impact assessment should also be made in cases where data are processed for taking decisions regarding specific individuals following any systematic and extensive evaluation of personal aspects relating to natural persons based on profiling those data or following the processing of special categories of personal data, biometric data, or data on criminal convictions and offences or related security measures. A data protection impact assessment is equally required for monitoring publicly accessible areas on a large scale, especially when using optic-electronic devices or for any other operations where the competent supervisory authority considers that the processing is likely to result in a high risk for the rights and freedoms of data subjects, in particular because they prevent data subjects from exercising a right or using a service or a contract, or because they are carried out systematically on a large scale. The processing of personal data should not be considered as being on a large scale, if the processing concerns personal data from patients or clients by an individual doctor, health care professional, or attorney. In these cases a data protection impact assessment should not be mandatory.

(72) There are circumstances under which it may be sensible and economic that the subject of a data protection impact assessment should be broader than a single project, for example where public authorities or bodies intend to establish a common application or processing platform or where several controllers plan to introduce a common application or processing environment across an industry sector or segment or for a widely used horizontal activity.

(73) In the context of the adoption of the national law on which the performance of the tasks of the public authority or public body is based and which regulates the specific processing operation or set of operations in question, Member States may deem it necessary to carry out such assessment prior to the processing activities.

(74) Where a data protection impact assessment indicates that the processing would, in the absence of envisaged safeguards, security measures and mechanisms to mitigate the risk, result in a high risk to the rights and freedoms of individuals and the controller is of the opinion that the risk cannot be mitigated by reasonable means in terms of available technologies and costs of implementation, the supervisory authority should be consulted, prior to the start of processing activities. Such high risk is likely to result from certain types of data processing and the extent and frequency of processing, which may result also in a realisation of damage or interference with the rights and freedoms of the individual. The supervisory authority should respond to the request for consultation in a defined period. However, the absence of a reaction of the supervisory authority within this period should be without prejudice to any intervention of the supervisory authority in accordance with its tasks and powers laid down in this Regulation, including the power to prohibit processing operations. As part of this consultation process, the outcome of a data protection impact assessment carried out with regard to the processing at issue pursuant to Article 33 may be submitted to the supervisory authority, in particular the measures envisaged to mitigate the risk for the rights and freedoms of individuals.

(74a) The processor should assist the controller, where necessary and upon request, in ensuring compliance with the obligations deriving from the carrying out of data protection impact assessments and from prior consultation of the supervisory authority.

(74b) A consultation with the supervisory authority should also take place in the course of the preparation of a legislative or regulatory measure which provides for the processing of personal data, in order to ensure the compliance of the intended processing with this Regulation and in particular to mitigate the risk involved for the data subject.

(75) Where the processing is carried out by a public authority, except for courts or independent judicial authorities when acting in their judicial capacity, or where, in the private sector, processing is carried out by a controller whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects, a person with expert knowledge of data protection law and practices should assist the controller or processor to monitor internal compliance with this Regulation. In the private sector, the core activities of a controller relate to its primary activities and do not relate to the processing of personal data as ancillary activities. The necessary level of expert knowledge should be determined in particular according to the data processing operations carried out and the protection required for the personal data processed by the controller or the processor. Such data protection officers, whether or not they are an employee of the controller, should be in a position to perform their duties and tasks in an independent manner.

(76) Associations or other bodies representing categories of controllers or processors should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors and the specific needs of micro, small and medium enterprises. In particular such codes of conduct could calibrate the obligations of controllers and processors, taking into account the risk likely to result from the processing for the rights and freedoms of individuals.

(76a) When drawing up a code of conduct, or when amending or extending such a code, associations and other bodies representing categories of controllers or processors should consult with relevant stakeholders, including data subjects where feasible, and have regard to submissions received and views expressed in response to such consultations.

(77) In order to enhance transparency and compliance with this Regulation, the establishment of certification mechanisms, data protection seals and marks should be encouraged, allowing data subjects to quickly assess the level of data protection of relevant products and services.

(78) Cross-border flows of personal data to and from countries outside the Union and international organisations are necessary for the expansion of international trade and international co-operation. The increase in these flows has raised new challenges and concerns with respect to the protection of personal data. However, when personal data are transferred from the Union to controllers, processors or other recipients in third countries or to international organisations, the level of protection of individuals guaranteed in the Union by this Regulation should not be undermined, including in cases of onward transfers of personal data from the third country or international organisation to controllers, processors in the same or another third country or international organisation. In any event, transfers to third countries and international organisations may only be carried out in full compliance with this Regulation. A transfer may only take place if, subject to the other provisions of this Regulation, the conditions laid down in Chapter V are complied with by the controller or processor.

(79) This Regulation is without prejudice to international agreements concluded between the Union and third countries regulating the transfer of personal data including appropriate safeguards for the data subjects. Member States may conclude international agreements which involve the transfer of personal data to third countries or international organisations, as far as such agreements do not affect this Regulation or any other provisions of EU law and include an appropriate level of protection for the fundamental rights of the data subjects.

(80) The Commission may decide with effect for the entire Union that certain third countries, or a territory or a specified sector within a third country, or an international organisation, offer an adequate level of data protection, thus providing legal certainty and uniformity throughout the Union as regards the third countries or international organisations which are considered to provide such level of protection. In these cases, transfers of personal data to these countries may take place without needing to obtain any further authorisation. The Commission may also decide, having given notice and a complete justification to the third country, to revoke such a decision.

(81) In line with the fundamental values on which the Union is founded, in particular the protection of human rights, the Commission should, in its assessment of the third country, or of a territory or of a specified sector within a third country, take into account how a given third country respects the rule of law, access to justice as well as international human rights norms and standards and its general and sectoral law, including legislation concerning public security, defence and national security as well as public order and criminal law. The adoption of an adequacy decision to a territory or a specified sector in a third country should take into account clear and objective criteria, such as specific processing activities and the scope of applicable legal standards and legislation in force in the third country. The third country should offer guarantees that ensure an adequate level of protection essentially equivalent to that guaranteed within the Union, in particular when data are processed in one or several specific sectors. In particular, the third country should ensure effective independent data protection supervision and should provide for cooperation mechanisms with the European data protection authorities, and the data subjects should be provided with effective and enforceable rights and effective administrative and judicial redress.

(81a) Apart from the international commitments the third country or international organisation has entered into, the Commission should also take account of obligations arising from the third country's or international organisation's participation in multilateral or regional systems in particular in relation to the protection of personal data, as well as the implementation of such obligations. In particular the third country's accession to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data and its Additional Protocol should be taken into account. The Commission should consult with the European Data Protection Board when assessing the level of protection in third countries or international organisations.

(81b) The Commission should monitor the functioning of decisions on the level of protection in a third country or a territory or specified sector within a third country, or an international organisation, including decisions adopted on the basis of Article 25(6) or Article 26 (4) of Directive 95/46/EC. In its adequacy decisions, the Commission should provide for a periodic review mechanism of their functioning. This periodic review should be made in consultation with the third country or international organisation in question and take into account all relevant developments in the third country or international organisation. For the purposes of monitoring and of carrying out the periodic reviews, the Commission should take into consideration the views and findings of the European Parliament and the Council as well as other relevant bodies and sources. The Commission should evaluate, within a reasonable time, the functioning of the latter decisions and report any relevant findings to the Committee within the meaning of Regulation (EU) No 182/2011 as established under this Regulation to the European Parliament, and to the Council.

(82) The Commission may recognise that a third country, or a territory or a specified sector within a third country, or an international organisation no longer ensures an adequate level of data protection. Consequently the transfer of personal data to that third country or international organisation should be prohibited, unless the requirements of Articles 42 to 44 are fulfilled. In that case, provision should be made for consultations between the Commission and such third countries or international organisations. The Commission should, in a timely manner, inform the third country or international organisation of the reasons and enter into consultations with it in order to remedy the situation.

(83) In the absence of an adequacy decision, the controller or processor should take measures to compensate for the lack of data protection in a third country by way of appropriate safeguards for the data subject. Such appropriate safeguards may consist of making use of binding corporate rules, standard data protection clauses adopted by the Commission, standard data protection clauses adopted by a supervisory authority or contractual clauses authorised by a supervisory authority. Those safeguards should ensure compliance with data protection requirements and the rights of the data subjects appropriate to intra-EU processing, including the availability of enforceable data subject rights and of effective legal remedies, including to obtain effective administrative or judicial redress and to claim compensation, in the Union or in a third country. They should relate in particular to compliance with the general principles relating to personal data processing, the principles of data protection by design and by default. Transfers may be carried out also by public authorities or bodies with public authorities or bodies in third countries or with international organisations with corresponding duties or functions, including on the basis of provisions to be inserted into administrative arrangements, such as a memorandum of understanding, providing for enforceable and effective rights for data subjects. The authorisation of the competent supervisory authority should be obtained when the safeguards are adduced in non legally binding administrative arrangements.

(84) The possibility for the controller or processor to use standard data protection clauses adopted by the Commission or by a supervisory authority should neither prevent the possibility for controllers or processors to include the standard data protection clauses in a wider contract, including in a contract between the processor and another processor, nor to add other clauses or additional safeguards as long as they do not contradict, directly or indirectly, the standard contractual clauses adopted by the Commission or by a supervisory authority or prejudice the fundamental rights or freedoms of the data subjects. Controllers and processors should be encouraged to provide additional safeguards via contractual commitments that supplement standard protection clauses.

(85) A corporate group or a group of enterprises engaged in a joint economic activity should be able to make use of approved binding corporate rules for its international transfers from the Union to organisations within the same corporate group of undertakings or group of enterprises, as long as such corporate rules include all essential principles and enforceable rights to ensure appropriate safeguards for transfers or categories of transfers of personal data.

(86) Provisions should be made for the possibility for transfers in certain circumstances where the data subject has given his explicit consent, where the transfer is occasional and necessary in relation to a contract or a legal claim, regardless of whether in a judicial procedure or whether in an administrative or any out-of-court procedure, including procedures before regulatory bodies. Provision should also be made for the possibility for transfers where important grounds of public interest laid down by Union or Member State law so require or where the transfer is made from a register established by law and intended for consultation by the public or persons having a legitimate interest. In this latter case such a transfer should not involve the entirety of the data or entire categories of the data contained in the register and, when the register is intended for consultation by persons having a legitimate interest, the transfer should be made only at the request of those persons or if they are to be the recipients, taking into full account the interests and fundamental rights of the data subject.

(87) These derogations should in particular apply to data transfers required and necessary for important reasons of public interest, for example in cases of international data exchange between competition authorities, tax or customs administrations, between financial supervisory authorities, between services competent for social security matters, or for public health, for example in case of contact tracing for contagious diseases or in order to reduce and/or eliminate doping in sport. A transfer of personal data should equally be regarded as lawful where it is necessary to protect an interest which is essential for the data subject's or another person's vital interests, including physical integrity or life, if the data subject is incapable of giving consent. In the absence of an adequacy decision, Union law or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of data to a third country or an international organization. Member States should notify such provisions to the Commission. Any transfer to an international humanitarian organisation of personal data of a data subject who is physically or legally incapable of giving consent, with the view to accomplishing a task incumbent under the Geneva Conventions and/or to work for the faithful application of international humanitarian law applicable in armed conflicts could be considered as necessary for an important reason of public interest or being in the vital interest of the data subject.

(88) Transfers which can be qualified as not repetitive and that only concern a limited number of data subjects, could also be possible for the purposes of the compelling legitimate interests pursued by the controller, when those interests are not overridden by the interests or rights and freedoms of the data subject and when the controller has assessed all the circumstances surrounding the data transfer. The controller should give particular consideration to the nature of the data, the purpose and duration of the proposed processing operation or operations, as well as the situation in the country of origin, the third country and the country of final destination, and adduced suitable safeguards to protect fundamental rights and freedoms of natural persons with respect to processing of their personal data. Such transfers should only be possible in residual cases where none of the other grounds for transfer are applicable. For scientific and historical research purposes or statistical purposes, the legitimate expectations of society for an increase of knowledge should be taken into consideration. The controller shall inform the supervisory authority and the data subject about the transfer.

(89) In any case, where the Commission has taken no decision on the adequate level of data protection in a third country, the controller or processor should make use of solutions that provide data subjects with enforceable and effective rights as regards processing of their data in the Union once this data has been transferred so that that they will continue to benefit from fundamental rights and safeguards.

(90) Some third countries enact laws, regulations and other legislative instruments which purport to directly regulate data processing activities of natural and legal persons under the jurisdiction of the Member States. This may include judgments of courts or tribunals or decisions of administrative authorities in third countries requiring a controller or processor to transfer or disclose personal data, and which are not based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State. The extraterritorial application of these laws, regulations and other legislative instruments may be in breach of international law and may impede the attainment of the protection of individuals guaranteed in the Union by this Regulation. Transfers should only be allowed where the conditions of this Regulation for a transfer to third countries are met. This may inter alia be the case where the disclosure is necessary for an important ground of public interest recognised in Union law or in a Member State law to which the controller is subject.

(91) When personal data moves across borders outside the Union it may put at increased risk the ability of individuals to exercise data protection rights in particular to protect themselves from the unlawful use or disclosure of that information. At the same time, supervisory authorities may find that they are unable to pursue complaints or conduct investigations relating to the activities outside their borders. Their efforts to work together in the cross-border context may also be hampered by insufficient preventative or remedial powers, inconsistent legal regimes, and practical obstacles like resource constraints. Therefore, there is a need to promote closer co-operation among data protection supervisory authorities to help them exchange information and carry out investigations with their international counterparts. For the purposes of developing international co-operation mechanisms to facilitate and provide international mutual assistance for the enforcement of legislation for the protection of personal data, the Commission and the supervisory authorities should exchange information and cooperate in activities related to the exercise of their powers with competent authorities in third countries, based on reciprocity and in compliance with the provisions of this Regulation, including those laid down in Chapter V.

(92) The establishment of supervisory authorities in Member States, empowered to perform their tasks and exercise their powers with complete independence, is an essential component of the protection of individuals with regard to the processing of their personal data. Member States may establish more than one supervisory authority, to reflect their constitutional, organisational and administrative structure.

(92a) The independence of supervisory authorities should not mean that the supervisory authorities cannot be subjected to control or monitoring mechanism regarding their financial expenditure. Neither does it imply that supervisory authorities cannot be subjected to judicial review.

(93) Where a Member State establishes several supervisory authorities, it should establish by law mechanisms for ensuring the effective participation of those supervisory authorities in the consistency mechanism. That Member State should in particular designate the supervisory authority which functions as a single contact point for the effective participation of those authorities in the mechanism, to ensure swift and smooth co-operation with other supervisory authorities, the European Data Protection Board and the Commission.

(94) Each supervisory authority should be provided with the financial and human resources, premises and infrastructure, which are necessary for the effective performance of their tasks, including for the tasks related to mutual assistance and co-operation with other supervisory authorities throughout the Union. Each supervisory authority should have a separate, public annual budget, which may be part of the overall state or national budget.

(95) The general conditions for the member or members of the supervisory authority should be laid down by law in each Member State and should in particular provide that those members should be either appointed by the parliament and/or the government or the head of State of the Member State based on a proposal from the government or a member of the government, or the parliament or its chamber, or by an independent body entrusted by Member State law with the appointment by means of a transparent procedure. In order to ensure the independence of the supervisory authority, the member or members should act with integrity, refrain from any action incompatible with their duties and should not, during their term of office, engage in any incompatible occupation, whether gainful or not. The supervisory authority should have its own staff, chosen by the supervisory authority or an independent body established by Member State law, which shall be subject to the exclusive direction of the member or members of the supervisory authority.

(95a) Each supervisory authority should be competent on the territory of its own Member State to exercise the powers and to perform the tasks conferred on it in accordance with this Regulation. This should cover in particular the processing in the context of the activities of an establishment of the controller or processor on the territory of its own Member State, the processing of personal data carried out by public authorities or private bodies acting in the public interest, processing affecting data subjects on its territory or processing carried out by a controller or processor not established in the European Union when targeting data subjects residing in its territory. This should include dealing with complaints lodged by a data subject, conducting investigations on the application of the Regulation, promoting public awareness of the risks, rules, safeguards and rights in relation to the processing of personal data.

(96) The supervisory authorities should monitor the application of the provisions pursuant to this Regulation and contribute to its consistent application throughout the Union, in order to protect natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the internal market. For that purpose, the supervisory authorities should co-operate with each other and the Commission, without the need for any agreement between Member States on the provision of mutual assistance or on such cooperation.

(97) Where the processing of personal data takes place in the context of the activities of an establishment of a controller or a processor in the Union and the controller or processor is established in more than one Member State, or where processing taking place in the context of the activities of a single establishment of a controller or processor in the Union substantially affects or is likely to substantially affect data subjects in more than one Member State, the supervisory authority for the main establishment of the controller or processor or for the single establishment of the controller or processor should act as lead authority. It should cooperate with the other authorities that are concerned, because the controller or processor has an establishment on the territory of their Member State, because data subjects residing on their territory are substantially affected, or because a complaint has been lodged with them. Also where a data subject not residing in that Member State has lodged a complaint, the supervisory authority to which such complaint has been lodged should also be a supervisory authority concerned. Within its tasks to issue guidelines on any question covering the application of this Regulation, the European Data Protection Board may issue guidelines in particular on the criteria to be taken into account in order to ascertain whether the processing in question substantially affects data subjects in more than one Member State and on what constitutes a relevant and reasoned objection.

(97a) The lead authority should be competent to adopt binding decisions regarding measures applying the powers conferred on it in accordance with the provisions of this Regulation. In its capacity as lead authority, the supervisory authority should closely involve and coordinate the concerned supervisory authorities in the decision-making process. In cases where the decisions is to reject the complaint by the data subject in whole or in part that decision should be adopted by the supervisory authority at which the complaint has been lodged.

(97b) The decision should be agreed jointly by the lead supervisory authority and the concerned supervisory authorities and should be directed towards the main or single establishment of the controller or processor and be binding on the controller and processor. The controller or processor should take the necessary measures to ensure the compliance with this Regulation and the implementation of the decision notified by the lead supervisory authority to the main establishment of the controller or processor as regards the processing activities in the Union.

(97c) Each supervisory authority not acting as lead supervisory authority should be competent to deal with local cases where the controller or processor is established in more than one Member State, but the subject matter of the specific processing concerns only processing carried out in a single Member State and involving only data subjects in that single Member State, for example, where the subject matter concerns the processing of employees data in the specific employment context of a Member State. In such cases, the supervisory authority should inform the lead supervisory authority without delay on this matter. After being informed, the lead supervisory authority should decide, whether it will deal with the case within the one-stop-shop mechanism pursuant to Article 54a or whether the supervisory authority which informed it should deal with the case at local level. When deciding whether it will deal with the case, the lead supervisory authority should take into account, whether there is an establishment of the controller or processor in the Member State of the supervisory authority which informed it, in order to ensure effective enforcement of a decision vis-à-vis the controller or processor. Where the lead supervisory authority decides to deal with the case, the supervisory authority which informed it should have the possibility to submit a draft for a decision, of which the lead supervisory authority should take utmost account when preparing its draft decision in the one-stop-shop mechanism pursuant to Article 54a.

(98) The rules on the lead supervisory authority and the one-stop-shop mechanism pursuant to Article 54a, should not apply where the processing is carried out by public authorities or private bodies in the public interest. In such cases the only supervisory authority competent to exercise the powers conferred to it in accordance with this Regulation should be the supervisory authority of the Member State where the public authority or private body is established.

(99) (…)

(100) In order to ensure consistent monitoring and enforcement of this Regulation throughout the Union, the supervisory authorities should have in each Member State the same tasks and effective powers, including powers of investigation, corrective powers and sanctions, and authorisation and advisory powers, particularly in cases of complaints from individuals, and without prejudice to the powers of prosecutorial authorities under national law, to bring infringements of this Regulation to the attention of the judicial authorities and/or engage in legal proceedings. Such powers should also include the power to impose a temporary or definitive limitation, including a ban, on processing. Member States may specify other tasks related to the protection of personal data under this Regulation. The powers of supervisory authorities should be exercised in conformity with appropriate procedural safeguards set out in Union law and national law, impartially, fairly and within a reasonable time. In particular each measure should be appropriate, necessary and proportionate in view of ensuring compliance with this Regulation, taking into account the circumstances of each individual case, respect the right of every person to be heard before any individual measure which would affect him or her adversely is taken and avoid superfluous costs and excessive inconveniences for the persons concerned. Investigatory powers as regards access to premises should be exercised in accordance with specific requirements in national procedural law, such as the requirement to obtain a prior judicial authorisation. Each legally binding measure of the supervisory authority should be in writing, be clear and unambiguous, indicate the supervisory authority which has issued the measure, the date of issue of the measure, bear the signature of the head, or a member of the supervisory authority authorised by him or her, give the reasons for the measure, and refer to the right of an effective remedy. This should not preclude additional requirements pursuant to national procedural law. The adoption of such legally binding decision implies that it may give rise to judicial review in the Member State of the supervisory authority that adopted the decision.

(101) (…)

(101a) Where the supervisory authority to which the complaint has been lodged is not the lead supervisory authority, the lead supervisory authority should closely co-operate with the supervisory authority to which the complaint has been lodged according to the provisions on co-operation and consistency laid down in this Regulation. In such cases, the lead supervisory authority should, when taking measures intended to produce legal effects, including the imposition of administrative fines, take utmost account of the view of the supervisory authority to which the complaint has been lodged and which should remain competent to carry out any investigation on the territory of its own Member State in liaison with the competent supervisory authority.

(101b) In cases where another supervisory authority should act as a lead supervisory authority for the processing activities of the controller or processor but the concrete subject matter of a complaint or the possible infringement concerns only processing activities of the controller or processor in the Member State where the complaint has been lodged or the possible infringement detected and the matter does not substantially affect or is not likely to substantially affect data subjects in other Member States, the supervisory authority receiving a complaint or detecting or being informed otherwise of situations that entail possible infringements of the Regulation should seek an amicable settlement with the controller and, if this proves unsuccessful, exercise its full range of powers. This should include specific processing carried out in the territory of the Member State of the supervisory authority or with regard to data subjects on the territory of that Member State; or to processing that is carried out in the context of an offer of goods or services specifically aimed at data subjects in the territory of the Member State of the supervisory authority; or that has to be assessed taking into account relevant legal obligations under national law.

(102) Awareness raising activities by supervisory authorities addressed to the public should include specific measures directed at controllers and processors, including micro, small and medium-sized enterprises, as well as individuals in particular in the educational context.

(103) The supervisory authorities should assist each other in performing their tasks and provide mutual assistance, so as to ensure the consistent application and enforcement of this Regulation in the internal market. A supervisory authority requesting mutual assistance may adopt a provisional measure, in case of no response of the requested supervisory authority within one month of receiving the request.

(104) Each supervisory authority should participate in joint operations between supervisory authorities, where appropriate. The requested supervisory authority should be obliged to respond to the request in a defined time period.

(105) In order to ensure the consistent application of this Regulation throughout the Union, a consistency mechanism for co-operation between the supervisory authorities should be established. This mechanism should in particular apply where a supervisory authority intends to adopt a measure intended to produce legal effects as regards processing operations which substantially affect a significant number of data subjects in several Member States. It should also apply where any supervisory authority concerned or the Commission requests that such matter should be dealt with in the consistency mechanism. This mechanism should be without prejudice to any measures that the Commission may take in the exercise of its powers under the Treaties.

(106) In application of the consistency mechanism, the European Data Protection Board should, within a determined period of time, issue an opinion, if a majority of its members so decides or if so requested by any supervisory authority concerned or the Commission. The European Data Protection Board should also be empowered to adopt legally binding decisions in case of disputes between supervisory authorities. For that purposes it should issue, in principle with a two-third majority of its members, legally binding decisions in clearly defined cases where there are conflicting views among supervisory authorities in particular in the cooperation mechanism between the lead supervisory authority and concerned supervisory authorities on the merits of the case, notably whether there is an infringement of this Regulation or not.

(107) (…)

(108) There may be an urgent need to act in order to protect the rights and freedoms of data subjects, in particular when the danger exists that the enforcement of a right of a data subject could be considerably impeded. Therefore, a supervisory authority may adopt duly justified provisional measures on its territory with a specified period of validity which should not exceed three months.

(109) The application of this mechanism should be a condition for the lawfulness of a measure intended to produce legal effects by a supervisory authority in those cases where its application is mandatory. In other cases of cross-border relevance, the co-operation mechanism between the lead supervisory authority and concerned supervisory authorities should be applied and mutual assistance and joint operations might be carried out between the concerned supervisory authorities on a bilateral or multilateral basis without triggering the consistency mechanism.

(110) In order to promote the consistent application of this Regulation, the European Data Protection Board should be set up as an independent body of the Union. To fulfil its objectives, the European Data Protection Board should have legal personality. The European Data Protection Board should be represented by its Chair. It should replace the Working Party on the Protection of Individuals with Regard to the Processing of Personal Data established by Directive 95/46/EC. It should consist of a head of a supervisory authority of each Member State and the European Data Protection Supervisor or their respective representatives. The Commission should participate in its activities without voting rights for the Commission and specific voting rights for the European Data Protection Supervisor. The European Data Protection Board should contribute to the consistent application of this Regulation throughout the Union, including by advising the Commission, in particular on the level of protection in third countries or international organisations, and promoting co-operation of the supervisory authorities throughout the Union. The European Data Protection Board should act independently when exercising its tasks.

(110a) The European Data Protection Board should be assisted by a secretariat provided by the European Data Protection Supervisor. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the European Data Protection Board by this Regulation should perform its tasks exclusively under the instructions of, and report to the Chair of the European Data Protection Board.

(111) Every data subject should have the right to lodge a complaint with a single supervisory authority, in particular in the Member State of his or her habitual residence, and have the right to an effective judicial remedy in accordance with Article 47 of the Charter of Fundamental Rights if the data subject considers that his or her rights under this Regulation are infringed or where the supervisory authority does not act on a complaint, partially or wholly rejects or dismisses a complaint or does not act where such action is necessary to protect the rights of the data subject. The investigation following a complaint should be carried out, subject to judicial review, to the extent that is appropriate in the specific case. The supervisory authority should inform the data subject of the progress and the outcome of the complaint within a reasonable period. If the case requires further investigation or coordination with another supervisory authority, intermediate information should be given to the data subject. In order to facilitate the submission of complaints, each supervisory authority should take measures such as providing a complaint submission form which can be completed also electronically, without excluding other means of communication.

(112) Where a data subject considers that his or her rights under this Regulation are infringed, he or she should have the right to mandate a body, organisation or association which is of non-profit making character, whose statutory objectives are in the public interest and which is active in the field of the protection of personal data and is constituted according to the law of a Member State, to lodge a complaint on his or her behalf with a supervisory authority, exercise the right to a judicial remedy on behalf of data subjects or exercise the right to receive compensation on behalf of data subjects if the latter is provided for in Member State law. Member States may provide that such a body, organisation or association should have the right to lodge, independently of a data subject's mandate, in such Member State a complaint, and/or have the right to an effective judicial remedy where it has reasons to considers that the rights of a data subject have been infringed as a result of the processing of personal data which is not in compliance with this Regulation. This body, organisation or association may not be allowed to claim compensation on a data subject's behalf independently of the data subject's mandate.

(113) Any natural or legal person has the right to bring an action for annulment of decisions of the European Data Protection Board before the Court of Justice of the European Union (the "Court of Justice") under the conditions provided for in Article 263 TFEU. As addressees of such decisions, the concerned supervisory authorities who wish to challenge them, have to bring action within two months of their notification to them, in accordance with Article 263 TFEU. Where decisions of the European Data Protection Board are of direct and individual concern to a controller, processor or the complainant, the latter may bring an action for annulment against those decisions and they should do so within two months of their publication on the website of the European Data Protection Board, in accordance with Article 263 TFEU. Without prejudice to this right under Article 263 TFEU, each natural or legal person should have an effective judicial remedy before the competent national court against a decision of a supervisory authority which produces legal effects concerning this person. Such a decision concerns in particular the exercise of investigative, corrective and authorisation powers by the supervisory authority or the dismissal or rejection of complaints. However, this right does not encompass other measures of supervisory authorities which are not legally binding, such as opinions issued by or advice provided by the supervisory authority. Proceedings against a supervisory authority should be brought before the courts of the Member State, where the supervisory authority is established and should be conducted in accordance with the national procedural law of that Member State. Those courts should exercise full jurisdiction which should include jurisdiction to examine all questions of fact and law relevant to the dispute before it. Where a complaint has been rejected or dismissed by a supervisory authority, the complainant may bring proceedings to the courts in the same Member State. In the context of judicial remedies relating to the application of this Regulation, national courts which consider a decision on the question necessary to enable them to give judgment, may, or in the case provided for in Article 267 TFEU, must, request the Court of Justice to give a preliminary ruling on the interpretation of Union law including this Regulation. Furthermore, where a decision of a supervisory authority implementing a decision of the European Data Protection Board is challenged before a national court and the validity of the decision of the European Data Protection Board is at issue, that national court does not have the power to declare the European Data Protection Board's decision invalid but must refer the question of validity to the Court of Justice in accordance with Article 267 TFEU as interpreted by the Court of Justice, whenever it considers the decision invalid. However, a national court may not refer a question on the validity of the decision of the European Data Protection Board at the request of a natural or legal person which had the opportunity to bring an action for annulment of that decision, in particular if it was directly and individually concerned by that decision, but had not done so within the period laid down by Article 263 TFEU.

(113a) Where a court seized with a proceeding against a decision of a supervisory authority has reason to believe that proceedings concerning the same processing such as the same subject matter as regards processing of the same controller or processor activities or the same cause of action are brought before a competent court in another Member State, it should contact that court in order to confirm the existence of such related proceedings. If related proceedings are pending before a court in another Member State, any court other than the court first seized may stay its proceedings or may, on request of one of the parties, decline jurisdiction in favour of the court first seized if the latter has jurisdiction over the proceedings in question and its law permits the consolidation of such related proceedings. Proceedings are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

(114) (…)

(115) (…)

(116) For proceedings against a controller or processor, the plaintiff should have the choice to bring the action before the courts of the Member States where the controller or processor has an establishment or where the data subject resides, unless the controller is a public authority of a Member State acting in the exercise of its public powers.

(117) (…)

(118) Any damage which a person may suffer as a result of processing that is not in compliance with this Regulation should be compensated by the controller or processor, that should be exempted from liability if they prove that they are not in any way responsible for the damage. The concept of damage should be broadly interpreted in the light of the case law of the Court of Justice of the European Union in a manner which fully reflects the objectives of this Regulation. This is without prejudice to any claims for damage deriving from the violation of other rules in Union or Member State law. When reference is made to a processing that is not in compliance with this Regulation it also covers processing that is not in compliance with delegated and implementing acts adopted in accordance with this Regulation and national law specifying rules of this Regulation. Data subjects should receive full and effective compensation for the damage they have suffered. Where controllers or processors are involved in the same processing each controller or processor should be held liable for the entire damage. However, where they are joined to the same judicial proceedings, in accordance with national law, compensation may be apportioned according to the responsibility of each controller or processor for the damage caused by the processing, provided that full and effective compensation of the data subject who suffered the damage is ensured. Any controller or processor who has paid full compensation, may subsequently institute recourse proceedings against other controllers or processors involved in the same processing.

(118a) Where specific rules on jurisdiction are contained in this Regulation, in particular as regards proceedings seeking a judicial remedy including compensation, against a controller or processor, general jurisdiction rules such as those of Regulation (EU) No 1215/2012 should not prejudice the application of such specific rules.

(118b) In order to strengthen the enforcement of the rules of this Regulation, penalties and administrative fines should be imposed for any infringement of the Regulation, in addition to, or instead of appropriate measures imposed by the supervisory authority pursuant to this Regulation. In a case of a minor infringement or if the fine likely to be imposed would constitute a disproportionate burden to a natural person, a reprimand may be issued instead of a fine. Due regard should however be given to the nature, gravity and duration of the infringement, the intentional character of the infringement, actions taken to mitigate the damage suffered, degree of responsibility or any relevant previous infringements, the manner in which the infringement became known to the supervisory authority, compliance with measures ordered against the controller or processor, adherence to a code of conduct and any other aggravating or mitigating factor. The imposition of penalties and administrative fines should be subject to adequate procedural safeguards in conformity with general principles of Union law and the Charter of Fundamental Rights, including effective judicial protection and due process.

(119) Member States may lay down the rules on criminal sanctions for infringements of this Regulation, including for infringements of national rules adopted pursuant to and within the limits of this Regulation. These criminal sanctions may also allow for the deprivation of the profits obtained through infringements of this Regulation. However, the imposition of criminal sanctions for infringements of such national rules and of administrative sanctions not lead to the breach of the principle of ne bis in idem, as interpreted by the Court of Justice of the European Union.

(120) In order to strengthen and harmonise administrative penalties against infringements of this Regulation, each supervisory authority should have the power to impose administrative fines. This Regulation should indicate offences the upper limit and criteria for fixing the related administrative fines, which should be determined by the competent supervisory authority in each individual case, taking account all relevant circumstances of the specific situation, with due regard in particular to the nature, gravity and duration of the breach and of its consequences and the measures taken to ensure compliance with the obligations under the Regulation and to prevent or mitigate the consequences of the infringement. Where the fines are imposed on an undertaking, for these purposes an undertaking should be understood as defined in Articles 101 and 102 TFEU . Where the fines are imposed on persons that are not an undertaking, the supervisory authority should take account of the general level of income in the Member State as well as the economic situation of the person in considering the appropriate amount of fine. The consistency mechanism may also be used to promote a consistent application of administrative fines. It should be for the Member States to determine whether and to which extent public authorities should be subject to administrative fines. Imposing an administrative fine or giving a warning does not affect the application of other powers of the supervisory authorities or of other sanctions under the Regulation.

(120a) (new) The legal systems of Denmark and Estonia do not allow for administrative fines as set out in this Regulation. The rules on administrative fines may be applied in such a manner that in Denmark, the fine is imposed by competent national courts as a criminal sanction and in Estonia, the fine is imposed by the supervisory authority in the framework of a misdemeanor procedure, provided that such an application of the rules in those Member States has an equivalent effect to administrative fines imposed by supervisory authorities. Therefore the competent national courts should take into account the recommendation by the supervisory authority initiating the fine. In any event, the fines imposed should be effective, proportionate and dissuasive.

(120a) Where this Regulation does not harmonise administrative penalties or where necessary in other cases, for example in cases of serious infringements of the Regulation, Member States should implement a system which provides for effective, proportionate and dissuasive penalties. The nature of such penalties (criminal or administrative) should be determined by national law.

(121) Member States law should reconcile the rules governing freedom of expression and information, including journalistic, academic, artistic and or literary expression with the right to the protection of personal data pursuant to this Regulation. The processing of personal data solely for journalistic purposes, or for the purposes of academic, artistic or literary expression should be subject to derogations or exemptions from certain provisions of this Regulation if necessary to reconcile the right to the protection of personal data, with the right to freedom of expression and information, as guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union. This should apply in particular to processing of personal data in the audiovisual field and in news archives and press libraries. Therefore, Member States should adopt legislative measures, which should lay down exemptions and derogations which are necessary for the purpose of balancing these fundamental rights. Such exemptions and derogations should be adopted by the Member States on general principles, on the rights of the data subject, on controller and processor, on the transfer of data to third countries or international organisations, on the independent supervisory authorities, on co-operation and consistency and on specific data processing situations. In case these exemptions or derogations differ from one Member State to another, the national law of the Member State to which the controller is subject should apply. In order to take account of the importance of the right to freedom of expression in every democratic society, it is necessary to interpret notions relating to that freedom, such as journalism, broadly.

(121a) This Regulation allows the principle of public access to official documents to be taken into account when applying the provisions set out in this Regulation. Public access to official documents may be considered as a public interest. Personal data in documents held by a public authority or a public body should be able to be publicly disclosed by this authority or body if the disclosure is provided for by Union law or Member State law to which the public authority or public body is subject. Such laws should reconcile public access to official documents and the reuse of public sector information with the right to the protection of personal data and may therefore provide for the necessary reconciliation with the right to the protection of personal data pursuant to this Regulation. The reference to public authorities and bodies should in this context include all authorities or other bodies covered by Member State law on public access to documents. Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information leaves intact and in no way affects the level of protection of individuals with regard to the processing of personal data under the provisions of Union and national law, and in particular does not alter the obligations and rights set out in this Regulation. In particular, that Directive should not apply to documents access to which is excluded or restricted by virtue of the access regimes on the grounds of protection of personal data, and parts of documents accessible by virtue of those regimes which contain personal data the re-use of which has been defined by law as being incompatible with the law concerning the protection of individuals with regard to the processing of personal data.

(122) (…)

(123) (…)

(124) Member State law or collective agreements (including 'works agreements') may provide for specific rules on the processing of employees' personal data in the employment context, in particular for the conditions under which personal data in the employment context may be processed on the basis of the consent of the employee, the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

(125) The processing of personal data for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes should be subject to appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation. These safeguards should ensure that technical and organisational measures are in place in order to ensure, in particular, the principle of data minimisation. The further processing of personal data for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes is to be carried out when the controller has assessed the feasibility to fulfill those purposes by processing data which does not permit or no longer permit the identification of data subjects, provided that appropriate safeguards exist (such as, for instance, pseudonymisation of the data). Member States should provide for appropriate safeguard to the processing of personal data for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes. Member States should be authorised to provide, under specific conditions and in the presence of appropriate safeguards for data subjects, specifications and derogations to the information requirements, rectification, erasure, to be forgotten, restriction of processing and on the right to data portability and the right to object when processing personal data for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes. The conditions and safeguards in question may entail specific procedures for data subjects to exercise those rights if this is appropriate in the light of the purposes sought by the specific processing along with technical and organisational measures aimed at minimising the processing of personal data in pursuance of the proportionality and necessity principles. The processing of personal data for scientific purposes should also comply with respect to other relevant legislation such as on clinical trials.

(125a)(…)

(125aa) By coupling information from registries, researchers can obtain new knowledge of great value when it comes to e.g. widespread diseases as cardiovascular disease, cancer, depression etc. On the basis of registries, research results can be enhanced, as they draw on a larger population. Within social science, research on the basis of registries enables researchers to obtain essential knowledge about long-term impact of a number of social conditions e.g. unemployment, education, and the coupling of this information to other life conditions. Research results obtained on the basis of registries provide solid, high quality knowledge, which can provide the basis for the formulation and implementation of knowledge-based policy, improve the quality of life for a number of people, and improve the efficiency of social services etc. In order to facilitate scientific research, personal data can be processed for scientific research purposes subject to appropriate conditions and safeguards set out in Member State or Union law.

(125b)Where personal data are processed for archiving purposes, this Regulation should also apply to that processing, bearing in mind that this Regulation should not apply to deceased persons. Public authorities or public or private bodies that hold records of public interest should be services which, pursuant to Union or Member State law, have a legal obligation to acquire, preserve, appraise, arrange, describe, communicate, promote, disseminate and provide access to records of enduring value for general public interest. Member States should also be authorised to provide that personal data may be further processed for archiving purposes, for example with a view to providing specific information related to the political behaviour under former totalitarian state regimes, genocide, crimes against humanity, in particular the Holocaust, or war crimes.

(126) Where personal data are processed for scientific research purposes, this Regulation should also apply to that processing. For the purposes of this Regulation, processing of personal data for scientific research purposes should be interpreted in a broad manner including for example technological development and demonstration, fundamental research, applied research, privately funded research and in addition should take into account the Union's objective under Article 179(1) of the Treaty on the Functioning of the European Union of achieving a European Research Area. Scientific research purposes should also include studies conducted in the public interest in the area of public health. To meet the specificities of processing personal data for scientific research purposes specific conditions should apply in particular as regards the publication or otherwise disclosure of personal data in the context of scientific research purposes. If the result of scientific research in particular in the health context gives reason for further measures in the interest of the data subject, the general rules of this Regulation should apply in view of those measures.

(126a) Where personal data are processed for historical research purposes, this Regulation should also apply to that processing. This should also include historical research and research for genealogical purposes, bearing in mind that this Regulation should not apply to deceased persons.

(126b) For the purpose of consenting to the participation in scientific research activities in clinical trials the relevant provisions of Regulation (EU) No. 536/2014 of the European Parliament and of the Council should apply.

(126c)Where personal data are processed for statistical purposes, this Regulation should apply to that processing. Union law or Member State law should, within the limits of this Regulation, determine statistical content, control of access, specifications for the processing of personal data for statistical purposes and appropriate measures to safeguard the rights and freedoms of the data subject and for guaranteeing statistical confidentiality. Statistical purposes mean any operation of collection and processing of personal data necessary for statistical surveys or for the production of statistical results. These statistical results may further be used for different purposes, including a scientific research purpose. Statistical purposes mean any operation of collection and processing of personal data necessary for statistical surveys or for the production of statistical results. The statistical purpose implies that the result of processing for statistical purposes is not personal data, but aggregate data, and that this result or the data are not used in support of measures or decisions regarding any particular individual.

(126d)The confidential information which the Union and national statistical authorities collect for the production of official European and official national statistics should be protected. European statistics should be developed, produced and disseminated in conformity with the statistical principles as set out in Article 338(2) of the Treaty of the Functioning of the European Union, while national statistics should also comply with national law. Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities provides further specifications on statistical confidentiality for European statistics.

(127) As regards the powers of the supervisory authorities to obtain from the controller or processor access to personal data and access to their premises, Member States may adopt by law, within the limits of this Regulation, specific rules in order to safeguard the professional or other equivalent secrecy obligations, in so far as necessary to reconcile the right to the protection of personal data with an obligation of professional secrecy. This is without prejudice to existing Member State obligations to adopt rules on professional secrecy where required by Union law.

(128) This Regulation respects and does not prejudice the status under existing constitutional law of churches and religious associations or communities in the Member States, as recognised in Article 17 of the Treaty on the Functioning of the European Union.

(129) In order to fulfil the objectives of this Regulation, namely to protect the fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data and to ensure the free movement of personal data within the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. In particular, delegated acts should be adopted in respect of criteria and requirements for certification mechanisms, information to be presented by standardised icons and procedures for providing such icons. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

(130) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission when provided for by this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers5. In this context, the Commission should consider specific measures for micro, small and medium-sized enterprises.

(131) The examination procedure should be used for the adoption of implementing acts on standard contractual clauses between controllers and processors and between processors; codes of conduct; technical standards and mechanisms for certification; the adequate level of protection afforded by a third country or a territory or a processing sector within that third country or an international organisation; adopt standard protection clauses; formats and procedures for the exchange of information by electronic means between controllers, processors and supervisory authorities for binding corporate rules; mutual assistance; the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board given that those acts are of general scope.

(132) The Commission should adopt immediately applicable implementing acts where available evidence reveals that a third country or a territory or a processing sector within that third country or an international organisation does not ensure an adequate level of protection, and imperative grounds of urgency so require.

[5] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers, OJ L 55, 28.2.2011, p. 13.

(133) Since the objectives of this Regulation, namely to ensure an equivalent level of protection of individuals and the free flow of data throughout the Union, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(134) Directive 95/46/EC should be repealed by this Regulation. Processing already under way on the date of application of this Regulation should be brought into conformity with this Regulation within the period of two years after which this Regulation enters into force. Where processing is based on consent pursuant to Directive 95/46/EC, it is not necessary for the data subject to give his or her consent again if the way the consent has been given is in line with the conditions of this Regulation, so as to allow the controller to continue such processing after the date of application of this Regulation. Commission decisions adopted and authorisations by supervisory authorities based on Directive 95/46/EC remain in force until amended, replaced or repealed.

(135) This Regulation should apply to all matters concerning the protection of fundamental rights and freedom vis-à-vis the processing of personal data, which are not subject to specific obligations with the same objective set out in Directive 2002/58/EC, including the obligations on the controller and the rights of individuals. In order to clarify the relationship between this Regulation and Directive 2002/58/EC, the latter Directive should be amended accordingly. Once this Regulation is adopted, Directive 2002/58/EC should be reviewed in particular in order to ensure consistency with this Regulation.

(136) (…)

(137) (…)

(138) (…)

(139) (…)

CHAPTER I
GENERAL PROVISIONS

Article 1

Subject matter and objectives

1. This Regulation lays down rules relating to the protection of individuals with regard to the processing of personal data and rules relating to the free movement of personal data.

2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.

2a. (…)

3. The free movement of personal data within the Union shall neither be restricted nor prohibited for reasons connected with the protection of individuals with regard to the processing of personal data.

Article 2

Material scope

1. This Regulation applies to the processing of personal data wholly or partly by automated means, and to the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.

2. This Regulation does not apply to the processing of personal data:

   (a) in the course of an activity which falls outside the scope of Union law;

   (b) (…)

   (c) by the Member States when carrying out activities which fall within the scope of Chapter 2 of Title V of the Treaty on European Union;

   (d) by a natural person in the course of a purely personal or household activity;

(e) by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences, the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

2a. For the processing of personal data by the Union institutions, bodies, offices and agencies, Regulation (EC) No 45/2001 applies. Regulation (EC) No 45/2001 and other Union legal instruments applicable to such processing of personal data shall be adapted to the principles and rules of this Regulation in accordance with Article 90a.

3. This Regulation shall be without prejudice to the application of Directive 2000/31/EC, in particular of the liability rules of intermediary service providers in Articles 12 to 15 of that Directive.

Article 3

Territorial scope

1. This Regulation applies to the processing of personal data in the context of the activities of an establishment of a controller or a processor in the Union, regardless of whether the processing takes place in the Union or not.

2. This Regulation applies to the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to:

(a) the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union; or

(b) the monitoring of their behaviour as far as their behaviour takes place within the European Union.

3. This Regulation applies to the processing of personal data by a controller not established in the Union, but in a place where the national law of a Member State applies by virtue of public international law.

Article 4

Definitions

For the purposes of this Regulation:

(1) 'personal data' means any information relating to an identified or identifiable natural person 'data subject'; an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person;

(2) (…)

(3) 'processing' means any operation or set of operations which is performed upon personal data or sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;

(3a) 'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future;

(3aa) 'profiling' means any form of automated processing of personal data consisting of using those data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements;

(3b) 'pseudonymisation' means the processing of personal data in such a way that the data can no longer be attributed to a specific data subject without the use of additional information, as long as such additional information is kept separately and subject to technical and organisational measures to ensure non-attribution to an identified or identifiable person;

(4) 'filing system' means any structured set of personal data which are accessible according to specific criteria, whether centralized, decentralized or dispersed on a functional or geographical basis;

(5) 'controller' means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by Union law or Member State law, the controller or the specific criteria for his nomination may be designated by Union law or by Member State law;

(6) 'processor' means a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller;

(7) 'recipient' means a natural or legal person, public authority, agency or any other body, to which the personal data are disclosed, whether a third party or not. However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of these data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing.

(7a) 'third party' means any natural or legal person, public authority, agency or any other body other than the data subject, the controller, the processor and the persons who, under the direct authority of the controller or the processor, are authorized to process the data;

(8) 'the data subject's consent' means any freely given, specific, informed and unambiguous indication of his or her wishes by which the data subject, either by a statement or by a clear affirmative action, signifies agreement to personal data relating to them being processed;

(9) 'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;

(10) 'genetic data' means all personal data relating to the genetic characteristics of an individual that have been inherited or acquired, which give unique information about the physiology or the health of that individual, resulting in particular from an analysis of a biological sample from the individual in question;

(11) 'biometric data' means any personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of an individual which allows or confirms the unique identification of that individual, such as facial images, or dactyloscopic data;

(12) 'data concerning health' means personal data related to the physical or mental health of an individual, including the provision of health care services, which reveal information about his or her health status.

(12a) (…)

(13) 'main establishment' means:

(a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in this case the establishment having taken such decisions shall be considered as the main establishment;.

(b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, and, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;

(14) 'representative' means any natural or legal person established in the Union who, designated by the controller or processor in writing pursuant to Article 25, represents the controller or processor, with regard to their respective obligations under this Regulation;

(15) 'enterprise' means any natural or legal person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity;

(16) 'group of undertakings' means a controlling undertaking and its controlled undertakings;

(17) 'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State of the Union for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings or group of enterprises engaged in a joint economic activity;

(18) (…)

(19) 'supervisory authority' means an independent public authority which is established by a Member State pursuant to Article 46;

(19a) 'supervisory authority concerned' means a supervisory authority which is concerned by the processing, because:

(a) the controller or processor is established on the territory of the Member State of that supervisory authority;

(b) data subjects residing in this Member State are substantially affected or likely to be substantially affected by the processing; or

(c) a complaint has been lodged to that supervisory authority.

(19b) 'cross-border processing of personal data' means either:

(a) processing which takes place in the context of the activities of establishments in more than one Member State of a controller or a processor in the Union and the controller or processor is established in more than one Member State; or

(b) processing which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.

(19c) 'relevant and reasoned objection' means:

an objection as to whether there is an infringement of this Regulation or not, or, as the case may be, whether the envisaged action in relation to the controller or processor is in conformity with the Regulation. The objection shall clearly demonstrate the significance of the risks posed by the draft decision as regards the fundamental rights and freedoms of data subjects and where applicable, the free flow of personal data within the Union;

(20) 'Information Society service' means any service as defined by Article 1 (2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services;

(21) 'international organisation' means an organisation and its subordinate bodies governed by public international law or any other body which is set up by, or on the basis of, an agreement between two or more countries.

CHAPTER II
PRINCIPLES

Article 5

Principles relating to personal data processing

1. Personal data must be:

   (a) processed lawfully, fairly and in a transparent manner in relation to the data subject ("lawfulness, fairness and transparency");

   (b) collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes; further processing of personal data for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes shall, in accordance with Article 83(1), not be considered incompatible with the initial purposes; ("purpose limitation");

   (c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimisation");

   (d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ("accuracy");

   (e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the data will be processed solely for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes in accordance with Article 83(1) subject to implementation of the appropriate technical and organisational measures required by the Regulation in order to safeguard the rights and freedoms of the data subject ("storage limitation");

(eb) processed in a way that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ("integrity and confidentiality");

(ee) (…)

(f) (…)

2. The controller shall be responsible for and be able to demonstrate compliance with paragraph 1 ("accountability").

Article 6

Lawfulness of processing

1. Processing of personal data shall be lawful only if and to the extent that at least one of the following applies:

(a) the data subject has given consent to the processing of their personal data for one or more specific purposes;

(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;

(c) processing is necessary for compliance with a legal obligation to which the controller is subject;

(d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;

(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child. This shall not apply to processing carried out by public authorities in the performance of their tasks.

2. (…)

2a. (new) Member States may maintain or introduce more specific provisions to adapt the application of the rules of this Regulation with regard to the processing of personal data for compliance with Article 6(1)(c) and (e) by determining more precisely specific requirements for the processing and other measures to ensure lawful and fair processing including for other specific processing situations as provided for in Chapter IX.

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 must be laid down by:

(a) Union law, or

(b) Member State law to which the controller is subject.

The purpose of the processing shall be determined in this legal basis or as regards the processing referred to in point (e) of paragraph 1, be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. This legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia the general conditions governing the lawfulness of data processing by the controller, the type of data which are subject to the processing, the data subjects concerned; the entities to, and the purposes for which the data may be disclosed; the purpose limitation; storage periods and processing operations and processing procedures, including measures to ensure lawful and fair processing, including for other specific processing situations as provided for in Chapter IX. The Union law or the Member State law must meet an objective of public interest and be proportionate to the legitimate aim pursued.

3a. Where the processing for another purpose than the one for which the data have been collected is not based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in points (aa) to (g) of Article 21(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the data are initially collected, take into account, inter alia:

(a) any link between the purposes for which the data have been collected and the purposes of the intended further processing;

(b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;

(c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9 or whether data related to criminal convictions and offences are processed, pursuant to Article 9a;

(d) the possible consequences of the intended further processing for data subjects;

(e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.

4. (…)

5. (…)

Article 7

Conditions for consent

1. Where processing is based on consent, the controller shall be able to demonstrate that consent was given by the data subject to the processing of their personal data.

1a. (…)

2. If the data subject's consent is given in the context of a written declaration which also concerns other matters, the request for consent must be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language. Any part of the declaration which constitutes an infringement of this Regulation that the data subject has given consent to shall not be binding.

3. The data subject shall have the right to withdraw his or her consent at any time. The withdrawal of consent shall not affect the lawfulness of processing based on consent before its withdrawal**.** Prior to giving consent, the data subject shall be informed thereof. It shall be as easy to withdraw consent as to give it.

4. When assessing whether consent is freely given, utmost account shall be taken of the fact whether, among others, the performance of a contract, including the provision of a service, is made conditional on the consent to the processing of data that is not necessary for the performance of this contract.

Article 8

Conditions applicable to child's consent in relation to information society services

1. Where Article 6 (1)(a) applies, in relation to the offering of information society services directly to a child, the processing of personal data of a child below the age of 16 years, or if provided for by Member State law a lower age which shall not be below 13 years, shall only be lawful if and to the extent that such consent is given or authorised by the holder of parental responsibility over the child.

1a. The controller shall make reasonable efforts to verify in such cases that consent is given or authorised by the holder of parental responsibility over the child, taking into consideration available technology.

2. Paragraph 1 shall not affect the general contract law of Member States such as the rules on the validity, formation or effect of a contract in relation to a child.

3. (…)

4. (…).

Article 9

Processing of special categories of personal data

1. The processing of personal data, revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of genetic data, biometric data in order to uniquely identify a person or data concerning health or sex life and sexual orientation shall be prohibited.

2. Paragraph 1 shall not apply if one of the following applies:

   (a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes, except where Union law or Member State law provide that the prohibition referred to in paragraph 1 may not be lifted by the data subject; or

   (b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law in so far as it is authorised by Union law or Member State law or a collective agreement pursuant to Member State law providing for adequate safeguards for the fundamental rights and the interests of the data subject; or

   (c) processing is necessary to protect the vital interests of the data subject or of another person where the data subject is physically or legally incapable of giving consent; or

(d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other non-profit-seeking body with a political, philosophical, religious or trade-union aim and on condition that the processing relates solely to the members or to former members of the body or to persons who have regular contact with it in connection with its purposes and that the data are not disclosed outside that body without the consent of the data subjects; or

(e) the processing relates to personal data which are manifestly made public by the data subject; or

(f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity; or

(g) processing is necessary for reasons of substantial public interest, on the basis of Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject; or

(h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services on the basis of Union law or Member State law or pursuant to contract with a health professional and subject to the conditions and safeguards referred to in paragraph 4; or

(hb) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices, on the basis of Union law or Member State law which provides for suitable and specific measures to safeguard the rights and freedoms of the data subject, in particular professional secrecy; or

(i) processing is necessary for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes in accordance with Article 83(1) based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

(j) (…)

3. (…)

4. Personal data referred to in paragraph 1 may be processed for the purposes referred to in point (h) of paragraph 2 when those data are processed by or under the responsibility of a professional subject to the obligation of professional secrecy under Union or Member State law or rules established by national competent bodies or by another person also subject to an obligation of secrecy under Union or Member State law or rules established by national competent bodies.

5. Member States may maintain or introduce further conditions, including limitations, with regard to the processing of genetic data, biometric data or health data.

Article 9a

Processing of data relating to criminal convictions and offences

Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) may only be carried out either under the control of official authority or when the processing is authorised by Union law or Member State law providing for adequate safeguards for the rights and freedoms of data subjects. Any comprehensive register of criminal convictions may be kept only under the control of official authority.

Article 10

Processing not requiring identification

1. If the purposes for which a controller processes personal data do not or do no longer require the identification of a data subject by the controller, the controller shall not be obliged to maintain, acquire or process additional information in order to identify the data subject for the sole purpose of complying with this Regulation.

2. Where, in such cases the controller is able to demonstrate that it is not in a position to identify the data subject, the controller shall inform the data subject accordingly, if possible. In such cases, Articles 15 to 18 do not apply except where the data subject, for the purpose of exercising his or her rights under these articles, provides additional information enabling his or her identification.

CHAPTER III

RIGHTS OF THE DATA SUBJECT

SECTION 1

TRANSPARENCY AND MODALITIES

Article 11

Transparent information and communication

1. (…)

2. (…)

Article 12

Transparent information, communication and modalities for exercising the rights of the data subject

1. The controller shall take appropriate measures to provide any information referred to in Article 14 and 14a and any communication under Articles 15 to 20, and 32 relating to the processing of personal data to the data subject in a concise, transparent, intelligible and easily accessible form, using clear and plain language, in particular for any information addressed specifically to a child. The information shall be provided in writing, or by other means, where appropriately in electronic form. When requested by the data subject, the information may be given orally provided that the identity of the data subject is proven by other means.

1a. The controller shall facilitate the exercise of data subject rights under Articles 15 to 20. In cases referred to in Article 10(2) the controller shall not refuse to act on the request of the data subject for exercising his or her rights under Articles 15 to 20, unless the controller demonstrates that it is not in a position to identify the data subject.

2. The controller shall provide information on action taken on a request under Articles 15 to 20 to the data subject without undue delay and, at the latest within one month of receipt of the request. This period may be extended for a maximum of two further months when necessary, taking into account the complexity of the request and the number of the requests. Where the extended period applies, the data subject shall be informed within one month of receipt of the request of the reasons for the delay. Where the data subject makes the request in electronic form, the information shall be provided in electronic form where possible, unless otherwise requested by the data subject.

3. If the controller does not take action on the request of the data subject, the controller shall inform the data subject without delay and at the latest within one month of receipt of the request of the reasons for not taking action and on the possibility of lodging a complaint to a supervisory authority and seeking a judicial remedy.

4. Information provided under Articles 14 and 14a and any communication and any actions taken under Articles 15 to 20 and 32 shall be provided free of charge. Where requests from a data subject are manifestly unfounded or excessive, in particular because of their repetitive character, the controller may charge a reasonable fee taking into account the administrative costs for providing the information or the communication or taking the action requested, or the controller may refuse to act on the request. In these cases, the controller shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

4a. Without prejudice to Article 10, where the controller has reasonable doubts concerning the identity of the individual making the request referred to in Articles 15 to 19, the controller may request the provision of additional information necessary to confirm the identity of the data subject.

4b. The information to be provided to data subjects pursuant to Article 14 and 14a may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible way a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.

4c. The Commission shall be empowered to adopt delegated acts in accordance with Article 86 for the purpose of determining the information to be presented by the icons and the procedures for providing standardised icons.

5. (…)

6. (…).

Article 13

Rights in relation to recipients

(...)

SECTION 2

INFORMATION AND ACCESS TO DATA

Article 14

Information to be provided where the data are collected from the data subject

1. Where personal data relating to a data subject are collected from the data subject, the controller shall, at the time when personal data are obtained, provide the data subject with the following information:

   (a) the identity and the contact details of the controller and, if any, of the controller's representative; the controller shall also include the contact details of the data protection officer, if any;

   (b) the purposes of the processing for which the personal data are intended as well as the legal basis of the processing.

   (c) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;

(d) where applicable, the recipients or categories of recipients of the personal data;

(e) where applicable, that the controller intends to transfer personal data to a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in case of transfers referred to in Article 42 or 43, or point (h) of Article 44(1), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available;

1a. In addition to the information referred to in paragraph 1, the controller shall, at the time when personal data are obtained, provide the data subject with the following further information necessary to ensure fair and transparent processing:

(a) the period for which the personal data will be stored, or if this is not possible, the criteria used to determine this period;

(b) …

(c) …

(d) …

(e) the existence of the right to request from the controller access to and rectification or erasure of the personal data or restriction of processing of personal data concerning the data subject or to object to the processing of such personal data as well as the right to data portability;

(ea) where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

(f) the right to lodge a complaint to a supervisory authority;

(g) whether the provision of personal data is a statutory or contractual requirement, or a requirement necessary to enter into a contract, as well as whether the data subject is obliged to provide the data and of the possible consequences of failure to provide such data;

(h) the existence of automated decision making including profiling referred to in Article 20(1) and (3) and at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

1b. Where the controller intends to further process the data for a purpose other than the one for which the data were collected the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 1a.

2. (…)

3. (…)

4. (…)

5. Paragraphs 1, 1a and 1b shall not apply where and insofar as the data subject already has the information.

6. (…)

7. (…)

8. (…).

Article 14a

Information to be provided where the data have not been obtained from the data subject

1. Where personal data have not been obtained from the data subject, the controller shall provide the data subject with the following information:

   (a) the identity and the contact details of the controller and, if any, of the controller's representative; the controller shall also include the contact details of the data protection officer, if any;

   (b) the purposes of the processing for which the personal data are intended as well as the legal basis of the processing;

   (ba) the categories of personal data concerned;

   (c) (…)

   (d) where applicable, the recipients or categories of recipients of the personal data;

   (da) where applicable, that the controller intends to transfer personal data to a recipient in a third country or international organisation and the existence or absence of an adequacy decision by the Commission, or in case of transfers referred to in Article 42 or 43, or point (h) of Article 44(1), reference to the appropriate or suitable safeguards and the means to obtain a copy of them or where they have been made available;

2. In addition to the information referred to in paragraph 1, the controller shall provide the data subject with the following information necessary to ensure fair and transparent processing in respect of the data subject:

   (b) the period for which the personal data will be stored, or if this is not possible, the criteria used to determine this period;

   (ba) where the processing is based on point (f) of Article 6(1), the legitimate interests pursued by the controller or by a third party;

(c) (…)

(e) the existence of the right to request from the controller access to and rectification or erasure of the personal data or restriction of processing of personal data concerning the data subject and to object to the processing of such personal data as well as the right to data portability;

(ea) where the processing is based on point (a) of Article 6(1) or point (a) of Article 9(2), the existence of the right to withdraw consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal;

(f) the right to lodge a complaint to a supervisory authority;

(g) from which source the personal data originate, and if applicable, whether it came from publicly accessible sources;

(h) the existence of automated decision making including profiling referred to in Article 20(1) and (3) and at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

3. The controller shall provide the information referred to in paragraphs 1 and 2:

(a) within a reasonable period after obtaining the data, but at the latest within one month, having regard to the specific circumstances in which the data are processed; or

(b) if the data are to be used for communication with the data subject, at the latest at the time of the first communication to that data subject; or

(c) if a disclosure to another recipient is envisaged, at the latest when the data are first disclosed.

3a. Where the controller intends to further process the data for a purpose other than the one for which the data were obtained, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.

4. Paragraphs 1 to 3a shall not apply where and insofar as:

(a) the data subject already has the information; or

(b) the provision of such information proves impossible or would involve a disproportionate effort; in particular for processing for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes subject to the conditions and safeguards referred to in Article 83(1) or in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of the archiving purposes in the public interest, or the scientific and historical research purposes or the statistical purposes; in such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available; or

(c) obtaining or disclosure is expressly laid down by Union or Member State law to which the controller is subject, which provides appropriate measures to protect the data subject's legitimate interests; or

(d) where the data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy.

Article 15

Right of access for the data subject

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and where such personal data are being processed, access to the data and the following information:

(a) the purposes of the processing;

(b) the categories of personal data concerned;

(c) the recipients or categories of recipients to whom the personal data have been or will be disclosed, in particular to recipients in third countries or international organisations;

(d) where possible, the envisaged period for which the personal data will be stored, or if this is not possible, the criteria used to determine this period;

(e) the existence of the right to request from the controller rectification or erasure of personal data or restriction of the processing of personal data concerning the data subject or to object to the processing of such personal data;

(f) the right to lodge a complaint to a supervisory authority;

(g) where the personal data are not collected from the data subject, any available information as to their source;

(h) the existence of automated decision making including profiling referred to in Article 20(1) and (3) and at least in those cases, meaningful information about the logic involved, as well as the significance and the envisaged consequences of such processing for the data subject.

1a. Where personal data are transferred to a third country or to an international organisation, the data subject shall have the right to be informed of the appropriate safeguards pursuant to Article 42 relating to the transfer.

1b. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request in electronic form, and unless otherwise requested by the data subject, the information shall be provided in an electronic form, which is commonly used.

2. (…)

2a. The right to obtain a copy referred to in paragraph 1b shall not adversely affect the rights and freedoms of others.

3. (…)

4. (…).

SECTION 3

RECTIFICATION AND ERASURE

Article 16

Right to rectification

The data subject shall have the right to obtain from the controller without undue delay the rectification of personal data concerning him or her which are inaccurate. Having regard to the purposes for which data were processed, the data subject shall have the right to obtain completion of incomplete personal data, including by means of providing a supplementary statement.

Article 17

Right to erasure ("right to be forgotten")

1. The data subject shall have the right to obtain from the controller the erasure of personal data concerning him or her without undue delay and the controller shall have the obligation to erase personal data without undue delay where one of the following grounds applies:

   (a) the data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;

   (b) the data subject withdraws consent on which the processing is based according to point (a) of Article 6(1), or point (a) of Article 9(2), and where there is no other legal ground for the processing of the data;

   (c) the data subject objects to the processing of personal data pursuant to Article 19(1) and there are no overriding legitimate grounds for the processing, or the data subject objects to the processing of personal data pursuant to Article 19(2);

   (d) they have been unlawfully processed;

   (e) the data have to be erased for compliance with a legal obligation in Union or Member State law to which the controller is subject;

   (f) the data have been collected in relation to the offering of information society services referred to in Article 8(1).

1a. (…)

2. (…)

2a. Where the controller has made the personal data public and is obliged pursuant to paragraph 1 to erase the data, the controller, taking account of available technology and the cost of implementation, shall take reasonable steps, including technical measures, to inform controllers which are processing the data, that the data subject has requested the erasure by such controllers of any links to, or copy or replication of that personal data.

3. Paragraphs 1 and 2 shall not apply to the extent that processing of the personal data is necessary:

(a) for exercising the right of freedom of expression and information;

(b) for compliance with a legal obligation which requires processing of personal data by Union or Member State law to which the controller is subject or for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller;

(c) for reasons of public interest in the area of public health in accordance with Article 9(2)(h) and (hb) as well as Article 9(4);

(d) for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes in accordance with Article 83(1) in so far as the right referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of the archiving purposes in the public interest, or the scientific and historical research purposes or the statistical purposes.

(e) for the establishment, exercise or defence of legal claims.

4. (…)
5. (…)
6. (…)
7. (…)
8. (…)
9. (…)

Article 17a

Right to restriction of processing

1. The data subject shall have the right to obtain from the controller the restriction of the processing of personal data where:

(a) the accuracy of the data is contested by the data subject, for a period enabling the controller to verify the accuracy of the data;

(ab) the processing is unlawful and the data subject opposes the erasure of the data and requests the restriction of their use instead;

(b) the controller no longer needs the personal data for the purposes of the processing, but they are required by the data subject for the establishment, exercise or defence of legal claims; or

(c) he or she has objected to processing pursuant to Article 19(1) pending the verification whether the legitimate grounds of the controller override those of the data subject.

2. Where processing of personal data has been restricted under paragraph 1, such data may, with the exception of storage, only be processed with the data subject's consent or for the establishment, exercise or defence of legal claims or for the protection of the rights of another natural or legal person or for reasons of important public interest of the Union or of a Member State.

3. A data subject who obtained the restriction of processing pursuant to paragraph 1 shall be informed by the controller before the restriction of processing is lifted.

Article 17b

Notification obligation regarding rectification, erasure or restriction

The controller shall communicate any rectification, erasure or restriction of processing carried out in accordance with Articles 16, 17(1) and 17a to each recipient to whom the data have been disclosed, unless this proves impossible or involves disproportionate effort. The controller shall inform the data subject about those recipients if the data subject requests this.

Article 18

Right to data portability

1. (…)

2. The data subject shall have the right to receive the personal data concerning him or her, which he or she has provided to a controller, in a structured and commonly used and machine-readable format and have the right to transmit those data to another controller without hindrance from the controller to which the data have been provided, where:

   (a) the processing is based on consent pursuant to point (a) of Article 6(1) or point (a) of Article 9 (2) or on a contract pursuant to point (b) of Article 6 (1); and

   (b) the processing is carried out by automated means.

2a. (new) In exercising his or her right to data portability pursuant to paragraph 1, the data subject has the right to obtain that the data is transmitted directly from controller to controller where technically feasible.

2a. The exercise of this right shall be without prejudice to Article 17. The right referred to in paragraph 2 shall not apply to processing necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

2aa. The right referred to in paragraph 2 shall not adversely affect the rights and freedoms of others.

3. (…)

SECTION 4

RIGHT TO OBJECT AND AUTOMATED INDIVIDUAL DECISION MAKING

Article 19

Right to object

1. The data subject shall have the right to object, on grounds relating to his or her particular situation, at any time to the processing of personal data concerning him or her which is based on points (e) or (f) of Article 6(1), including profiling based on these provisions. The controller shall no longer process the personal data unless the controller demonstrates compelling legitimate grounds for the processing which override the interests, rights and freedoms of the data subject or for the establishment, exercise or defence of legal claims.

2. Where personal data are processed for direct marketing purposes, the data subject shall have the right to object at any time to the processing of personal data concerning him or her for such marketing, which includes profiling to the extent that it is related to such direct marketing.

2a. Where the data subject objects to the processing for direct marketing purposes, the personal data shall no longer be processed for such purposes.

2b. (new) At the latest at the time of the first communication with the data subject, the right referred to in paragraphs 1 and 2 shall be explicitly brought to the attention of the data subject and shall be presented clearly and separately from any other information.

2b. In the context of the use of information society services, and notwithstanding Directive 2002/58/EC, the data subject may exercise his or her right to object by automated means using technical specifications.

2aa. Where personal data are processed for scientific and historical research purposes or statistical purposes pursuant to Article 83(1), the data subject, on grounds relating to his or her particular situation, shall have the right to object to processing of personal data concerning him or her, unless the processing is necessary for the performance of a task carried out for reasons of public interest.

3. (…).

Article 20

Automated individual decision making, including profiling

1. The data subject shall have the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her.

1a. Paragraph 1 shall not apply if the decision:

(a) is necessary for entering into, or performance of, a contract between the data subject and a data controller ; or

(b) is authorized by Union or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights and freedoms and legitimate interests; or

(c) is based on the data subject's explicit consent.

1b. In cases referred to in paragraph 1a (a) and (c) the data controller shall implement suitable measures to safeguard the data subject's rights and freedoms and legitimate interests, at least the right to obtain human intervention on the part of the controller, to express his or her point of view and to contest the decision.

2. (…)

3. Decisions referred to in paragraph 1a shall not be based on special categories of personal data referred to in Article 9(1), unless points (a) or (g) of Article 9(2) apply and suitable measures to safeguard the data subject's rights and freedoms and legitimate interests are in place.

4. (…)

5. (…)

SECTION 5

Restrictions

Article 21

Restrictions

1. Union or Member State law to which the data controller or processor is subject may restrict by way of a legislative measure the scope of the obligations and rights provided for in Articles 12 to 20 and Article 32, as well as Article 5 in so far as its provisions correspond to the rights and obligations provided for in Articles 12 to 20, when such a restriction respects the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard:

   (aa) national security;

   (ab) defence;

   (a) public security;

   (b) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security;

   (c) other important objectives of general public interests of the Union or of a Member State, in particular an important economic or financial interest of the Union or of a Member State, including monetary, budgetary and taxation a matters, public health and social security;

   (ca) the protection of judicial independence and judicial proceedings;

   (d) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;

   (e) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in cases referred to in (aa), (ab), (a), (b), (c) and (d);

(f) the protection of the data subject or the rights and freedoms of others;

(g) the enforcement of civil law claims.

2. In particular, any legislative measure referred to in paragraph 1 shall contain specific provisions at least, where relevant, as to:

(a) the purposes of the processing or categories of processing,

(b) the categories of personal data,

(c) the scope of the restrictions introduced,

(d) the safeguards to prevent abuse or unlawful access or transfer;

(e) the specification of the controller or categories of controllers,

(f) the storage periods and the applicable safeguards taking into account the nature, scope and purposes of the processing or categories of processing;

(g) the risks for the rights and freedoms of data subjects; and

(h) the right of data subjects to be informed about the restriction, unless this may be prejudicial to the purpose of the restriction.

CHAPTER IV
CONTROLLER AND PROCESSOR

SECTION 1
GENERAL OBLIGATIONS

Article 22

Responsibility of the controller

1. Taking into account the nature, scope, context and purposes of the processing as well as the risks of varying likelihood and severity for the rights and freedoms of individuals, the controller shall implement appropriate technical and organisational measures to ensure and be able to demonstrate that the processing of personal data is performed in compliance with this Regulation. These measures shall be reviewed and updated where necessary.

2. (…)

2a. Where proportionate in relation to the processing activities, the measures referred to in paragraph 1 shall include the implementation of appropriate data protection policies by the controller.

2b. Adherence to approved codes of conduct pursuant to Article 38 or an approved certification mechanism pursuant to Article 39 may be used as an element to demonstrate compliance with the obligations of the controller.

3. (…)

4. (…)

Article 23

Data protection by design and by default

1. Having regard to the state of the art and the cost of implementation and taking account of the nature, scope, context and purposes of the processing as well as the risks of varying likelihood and severity for rights and freedoms of individuals posed by the processing, the controller shall, both at the time of the determination of the means for processing and at the time of the processing itself, implement appropriate technical and organisational measures, such as pseudonymisation, which are designed to implement data protection principles, such as data minimisation, in an effective way and to integrate the necessary safeguards into the processing in order to meet the requirements of this Regulation and protect the rights of data subjects.

2. The controller shall implement appropriate technical and organisational measures for ensuring that, by default, only personal data which are necessary for each specific purpose of the processing are processed; this applies to the amount of data collected, the extent of their processing, the period of their storage and their accessibility. In particular, such measures shall ensure that by default personal data are not made accessible without the individual's intervention to an indefinite number of individuals.

2a. An approved certification mechanism pursuant to Article 39 may be used as an element to demonstrate compliance with the requirements set out in paragraphs 1 and 2.

3. (…)

4. (…)

Article 24

Joint controllers

1. Where two or more controllers jointly determine the purposes and means of the processing of personal data, they are joint controllers. They shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this Regulation, in particular as regards the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 14 and 14a, by means of an arrangement between them unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject. The arrangement may designate a point of contact for data subjects.

2. Irrespective of the terms of the arrangement referred to in paragraph 1, the data subject may exercise his or her rights under this Regulation in respect of and against each of the controllers.

3. The arrangement shall duly reflect the joint controllers' respective effective roles and relationships vis-à-vis data subjects, and the essence of the arrangement shall be made available for the data subject.

Article 25

Representatives of controllers not established in the Union

1. Where Article 3(2) applies, the controller or the processor shall designate in writing a representative in the Union.

2. This obligation shall not apply to:

(a) (…);

(b) processing which is occasional, does not include, on a large scale, processing of special categories of data as referred to in Article 9(1) or processing of data relating to criminal convictions and offences referred to in Article 9a, and is unlikely to result in a risk for the rights and freedoms of individuals, taking into account the nature, context, scope and purposes of the processing; or

(c) a public authority or body.

(d) (…)

3. The representative shall be established in one of those Member States where the data subjects are and whose personal data are processed in relation to the offering of goods or services to them, or whose behaviour is monitored.

3a. The representative shall be mandated by the controller or the processor to be addressed in addition to or instead of the controller or the processor by, in particular, supervisory authorities and data subjects, on all issues related to the processing of personal data, for the purposes of ensuring compliance with this Regulation.

4. The designation of a representative by the controller or the processor shall be without prejudice to legal actions which could be initiated against the controller or the processor themselves.

Article 26

Processor

1. Where a processing is to be carried out on behalf of a controller, the controller shall use only processors providing sufficient guarantees to implement appropriate technical and organisational measures in such a way that the processing will meet the requirements of this Regulation and ensure the protection of the rights of the data subject.

1a. The processor shall not enlist another processor without the prior specific or general written consent of the controller. In the latter case, the processor should always inform the controller on any intended changes concerning the addition or replacement of other processors, thereby giving the opportunity to the controller to object to such changes.

2. The carrying out of processing by a processor shall be governed by a contract or other legal act under Union or Member State law, binding the processor to the controller, setting out the subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects, the obligations and rights of the controller and stipulating in particular that the processor shall:

(a) process the personal data only on documented instructions from the controller, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which the processor is subject; in such a case, the processor shall inform the controller of that legal requirement before processing the data, unless that law prohibits such information on important grounds of public interest;

(b) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

(c) take all measures required pursuant to Article 30;

(d) respect the conditions referred to in paragraphs 1a and 2a for enlisting another processor;

(e) taking into account the nature of the processing, assist the controller by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III;

(f) assist the controller in ensuring compliance with the obligations pursuant to Articles 30 to 34 taking into account the nature of processing and the information available to the processor;

(g) at the choice of the controller, delete or return all the personal data to the controller after the end of the provision of data processing services, and delete existing copies unless Union or Member State law requires storage of the data;

(h) make available to the controller all information necessary to demonstrate compliance with the obligations laid down in this Article and allow for and contribute to audits, including inspections, conducted by the controller or another auditor mandated by the controller. The processor shall immediately inform the controller if, in his opinion, an instruction breaches this Regulation or Union or Member State data protection provisions.

2a. Where a processor enlists another processor for carrying out specific processing activities on behalf of the controller, the same data protection obligations as set out in the contract or other legal act between the controller and the processor as referred to in paragraph 2 shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a way that the processing will meet the requirements of this Regulation. Where that other processor fails to fulfil its data protection obligations, the initial processor shall remain fully liable to the controller for the performance of that other processor's obligations.

2aa. Adherence of the processor to an approved code of conduct pursuant to Article 38 or an approved certification mechanism pursuant to Article 39 may be used as an element to demonstrate sufficient guarantees referred to in paragraphs 1 and 2a.

2ab. Without prejudice to an individual contract between the controller and the processor, the contract or the other legal act referred to in paragraphs 2 and 2a may be based, in whole or in part, on standard contractual clauses referred to in paragraphs 2b and 2c, including when they are part of a certification granted to the controller or processor pursuant to Articles 39 and 39a.

2b. The Commission may lay down standard contractual clauses for the matters referred to in paragraph 2 and 2a and in accordance with the examination procedure referred to in Article 87(2).

2c. A supervisory authority may adopt standard contractual clauses for the matters referred to in paragraph 2 and 2a and in accordance with the consistency mechanism referred to in Article 57.

3. The contract or the other legal act referred to in paragraphs 2 and 2a shall be in writing, including in an electronic form.

4. Without prejudice to Articles 77, 79 and 79b, if a processor in breach of this Regulation determines the purposes and means of data processing, the processor shall be considered to be a controller in respect of that processing.

5. (…).

Article 27

Processing under the authority of the controller and processor

The processor and any person acting under the authority of the controller or of the processor who has access to personal data shall not process them except on instructions from the controller, unless required to do so by Union or Member State law.

Article 28

Records of processing activities

1. Each controller and, if any, the controller's representative, shall maintain a record of processing activities under its responsibility. This record shall contain the following information:

   (a) the name and contact details of the controller and any joint controller, the controller's representative and the data protection officer, if any;

   (b) (…)

   (c) the purposes of the processing;

(d) a description of categories of data subjects and of the categories of personal data;

(e) the categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries;

(f) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;

(g) where possible, the envisaged time limits for erasure of the different categories of data;

(h) where possible, a general description of the technical and organisational security measures referred to in Article 30(1).

2a. Each processor and, if any, the processor's representative shall maintain a record of all categories of personal data processing activities carried out on behalf of a controller, containing:

(a) the name and contact details of the processor or processors and of each controller on behalf of which the processor is acting, and of the controller's or the processor's representative, and the data protection officer, if any;

(b) (…)

(c) the categories of processing carried out on behalf of each controller;

(d) where applicable, transfers of data to a third country or an international organisation, including the identification of that third country or international organisation and, in case of transfers referred to in point (h) of Article 44(1), the documentation of appropriate safeguards;

(e) where possible, a general description of the technical and organisational security measures referred to in Article 30(1).

3a. The records referred to in paragraphs 1 and 2a shall be in writing, including in an electronic form.

3. Upon request, the controller and the processor and, if any, the controller's or the processor's representative, shall make the record available to the supervisory authority.

4. The obligations referred to in paragraphs 1 and 2a shall not apply to an enterprise or an organisation employing fewer than 250 persons unless the processing it carries out is likely to result in a risk for the rights and freedoms of data subject, the processing is not occasional, or the processing includes special categories of data as referred to in Article 9(1) or processing of data relating to criminal convictions and offences referred to in Article 9a.

5. (…)

6. (…).

Article 29

Co-operation with the supervisory authority

1. The controller and the processor and, if any, the representative of the controller or the processor, shall co-operate, on request, with the supervisory authority in the performance of its tasks.

2. (…).

SECTION 2
DATA SECURITY

Article 30

Security of processing

1. Having regard to the state of the art and the costs of implementation and taking into account the nature, scope, context and purposes of the processing as well as the risk of varying likelihood and severity for the rights and freedoms of individuals, the controller and the processor shall implement appropriate technical and organisational measures, to ensure a level of security appropriate to the risk, including inter alia, as appropriate:
   (a) the pseudonymisation and encryption of personal data;

   (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of systems and services processing personal data;

   (c) the ability to restore the availability and access to data in a timely manner in the event of a physical or technical incident;

   (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

1a. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by data processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

2. (…)

2a. Adherence to an approved code of conduct pursuant to Article 38 or an approved certification mechanism pursuant to Article 39 may be used as an element to demonstrate compliance with the requirements set out in paragraph 1.

2b. The controller and processor shall take steps to ensure that any person acting under the authority of the controller or the processor who has access to personal data shall not process them except on instructions from the controller, unless he or she is required to do so by Union or Member State law.

3. (…)

4. (…).

Article 31

Notification of a personal data breach to the supervisory authority

1. In the case of a personal data breach, the controller shall without undue delay and, where feasible, not later than 72 hours after having become aware of it, notify the personal data breach to the supervisory authority competent in accordance with Article 51, unless the personal data breach is unlikely to result in a risk for the rights and freedoms of individuals. The notification to the supervisory authority shall be accompanied by a reasoned justification in cases where it is not made within 72 hours.

1a. (…)

2. The processor shall notify the controller without undue delay after becoming aware of a personal data breach.

3. The notification referred to in paragraph 1 must at least:

   (a) describe the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of data records concerned;

   (b) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained;

   (c) (…)

(d) describe the likely consequences of the personal data breach;

(e) describe the measures taken or proposed to be taken by the controller to address the personal data breach, including, where appropriate, to mitigate its possible adverse effects.

(f) (…)

3a. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.

4. The controller shall document any personal data breaches, comprising the facts surrounding the breach, its effects and the remedial action taken. This documentation must enable the supervisory authority to verify compliance with this Article.

5. (…)

6. (…)

Article 32

Communication of a personal data breach to the data subject

1. When the personal data breach is likely to result in a high risk the rights and freedoms of individuals the controller shall communicate the personal data breach to the data subject without undue delay.

2. The communication to the data subject referred to in paragraph 1 shall describe in clear and plain language the nature of the personal data breach and contain at least the information and the recommendations provided for in points (b)**,** (d) and (e) of Article 31(3).

3. The communication to the data subject referred to in paragraph 1 shall not be required if:

(a) the controller has implemented appropriate technical and organisational protection measures, and that those measures were applied to the data affected by the personal data breach, in particular those that render the data unintelligible to any person who is not authorised to access it, such as encryption; or

(b) the controller has taken subsequent measures which ensure that the high risk for the rights and freedoms of data subjects referred to in paragraph 1 is no longer likely to materialise; or

(c) it would involve disproportionate effort. In such case, there shall instead be a public communication or similar measure whereby the data subjects are informed in an equally effective manner.

4. If the controller has not already communicated the personal data breach to the data subject, the supervisory authority, having considered the likelihood of the breach to result in a high risk, may require it to do so or may decide that any of the conditions referred to in paragraph 3 are met.

5. (…)

6. (…).

SECTION 3

DATA PROTECTION IMPACT ASSESSMENT AND PRIOR CONSULTATION

Article 33

Data protection impact assessment

1. Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk for the rights and freedoms of individuals, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.

1a. The controller shall seek the advice of the data protection officer, where designated, when carrying out a data protection impact assessment.

2. A data protection impact assessment referred to in paragraph 1 shall in particular be required in the following cases:

(a) a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the individual or similarly significantly affect the individual;

(b) processing on a large scale of special categories of data referred to in Article 9(1), or of data relating to criminal convictions and offences referred to in Article 9a;

(c) a systematic monitoring of a publicly accessible area on a large scale.

(d) (…)

(e) (…)

2a. The supervisory authority shall establish and make public a list of the kind of processing operations which are subject to the requirement for a data protection impact assessment pursuant to paragraph 1. The supervisory authority shall communicate those lists to the European Data Protection Board.

2b. The supervisory authority may also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required. The supervisory authority shall communicate those lists to the European Data Protection Board.

2c. Prior to the adoption of the lists referred to in paragraphs 2a and 2b the competent supervisory authority shall apply the consistency mechanism referred to in Article 57 where such lists involve processing activities which are related to the offering of goods or services to data subjects or to the monitoring of their behaviour in several Member States, or may substantially affect the free movement of personal data within the Union.

3. The assessment shall contain at least:

(a) a systematic description of the envisaged processing operations and the purposes of the processing, including where applicable the legitimate interest pursued by the controller;

(b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;

(c) an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1;

(d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.

3a. Compliance with approved codes of conduct referred to in Article 38 by the relevant controllers or processors shall be taken into due account in assessing the impact of the processing operations performed by such controllers or processors, in particular for the purposes of a data protection impact assessment.

4. Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of the processing operations.

5. Where the processing pursuant to point (c) or (e) of Article 6(1) has a legal basis in Union law, or the law of the Member State to which the controller is subject, and such law regulates the specific processing operation or set of operations in question, and a data protection impact assessment has already been made as part of a general impact assessment in the context of the adoption of this legal basis, paragraphs 1 to 3 shall not apply, unless Member States deem it necessary to carry out such assessment prior to the processing activities.

6. (…)

7. (…)

8. Where necessary, the controller shall carry out a review to assess if the processing of personal data is performed in compliance with the data protection impact assessment at least when there is a change of the risk represented by the processing operations.

Article 34

Prior consultation

1. (…)

2. The controller shall consult the supervisory authority prior to the processing of personal data where a data protection impact assessment as provided for in Article 33 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.

3. Where the supervisory authority is of the opinion that the intended processing referred to in paragraph 2 would not comply with this Regulation, in particular where the controller has insufficiently identified or mitigated the risk, it shall within a maximum period of eight weeks following the request for consultation give advice to the data controller, and where applicable the processor in writing, and may use any of its powers referred to in Article 53. This period may be extended for a further six weeks, taking into account the complexity of the intended processing. Where the extended period applies, the controller, and where applicable the processor shall be informed within one month of receipt of the request including of the reasons for the delay. These periods may be suspended until the supervisory authority has obtained any information it may have requested for the purposes of the consultation.

4. (…)

5. (…)

6. When consulting the supervisory authority pursuant to paragraph 2, the controller shall provide the supervisory authority with
   (a) where applicable, the respective responsibilities of controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;

   (b) the purposes and means of the intended processing;

   (c) the measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to this Regulation;

   (d) where applicable, the contact details of the data protection officer;

   (e) the data protection impact assessment provided for in Article 33; and

   (f) any other information requested by the supervisory authority.

7. Member States shall consult the supervisory authority during the preparation of a proposal for a legislative measure to be adopted by a national parliament or of a regulatory measure based on such a legislative measure, which relates to the processing of personal data.

7a. Notwithstanding paragraph 2, Member States' law may require controllers to consult with, and obtain prior authorisation from, the supervisory authority in relation to the processing of personal data by a controller for the performance of a task carried out by the controller in the public interest, including the processing of such data in relation to social protection and public health.

8. (…)

9. (…).

SECTION 4
DATA PROTECTION OFFICER

Article 35

Designation of the data protection officer

1. The controller and the processor shall designate a data protection officer in any case where:
   (a) the processing is carried out by a public authority or body, except for courts acting in their judicial capacity; or

   (b) the core activities of the controller or the processor consist of processing operations which, by virtue of their nature, their scope and/or their purposes, require regular and systematic monitoring of data subjects on a large scale; or

   (c) the core activities of the controller or the processor consist of processing on a large scale of special categories of data pursuant to Article 9 and data relating to criminal convictions and offences referred to in Article 9a.

2. A group of undertakings may appoint a single data protection officer provided that a data protection officer is easily accessible from each establishment.

3. Where the controller or the processor is a public authority or body, a single data protection officer may be designated for several such authorities or bodies, taking account of their organisational structure and size.

4. In cases other than those referred to in paragraph 1, the controller or processor or associations and other bodies representing categories of controllers or processors may or, where required by Union or Member State law shall, designate a data protection officer. The data protection officer may act for such associations and other bodies representing controllers or processors.

5. The data protection officer shall be designated on the basis of professional qualities and, in particular, expert knowledge of data protection law and practices and the ability to fulfil the tasks referred to in Article 37.

6. (…)

7. (…)

8. The data protection officer may be a staff member of the controller or processor, or fulfil the tasks on the basis of a service contract.

9. The controller or the processor shall publish the contact details of the data protection officer and communicate these to the supervisory authority.

10. (…)

11. (…).

Article 36

Position of the data protection officer

1. The controller or the processor shall ensure that the data protection officer is properly and in a timely manner involved in all issues which relate to the protection of personal data.

2. The controller or processor shall support the data protection officer in performing the tasks referred to in Article 37 by providing resources necessary to carry out these tasks as well as access to personal data and processing operations, and to maintain his or her expert knowledge.

2a. (new) Data subjects may contact the data protection officer on all issues related to the processing of the data subject's data and the exercise of their rights under this Regulation.

3. The controller or processor shall ensure that the data protection officer does not receive any instructions regarding the exercise of these tasks. He or she shall not be dismissed or penalised by the controller or the processor for performing his tasks. The data protection officer shall directly report to the highest management level of the controller or the processor.

4. The data protection officer shall be bound by secrecy or confidentiality concerning the performance of his or her tasks, in accordance with Union or Member State law.

4a. The data protection officer may fulfil other tasks and duties. The controller or processor shall ensure that any such tasks and duties do not result in a conflict of interests.

Article 37

Tasks of the data protection officer

1. The data protection officer shall have at least the following tasks:

   (a) to inform and advise the controller or the processor and the employees who are processing personal data of their obligations pursuant to this Regulation and to other Union or Member State data protection provisions;

   (b) to monitor compliance with this Regulation, with other Union or Member State data protection provisions and with the policies of the controller or processor in relation to the protection of personal data, including the assignment of responsibilities, awareness-raising and training of staff involved in the processing operations, and the related audits;

   (c) (…)

   (d) (…)

   (e) (…)

   (f) to provide advice where requested as regards the data protection impact assessment and monitor its performance pursuant to Article 33;

(g) to cooperate with the supervisory authority;

(h) to act as the contact point for the supervisory authority on issues related to the processing of personal data, including the prior consultation referred to in Article 34, and consult, as appropriate, on any other matter.

2. (…)

2a. The data protection officer shall in the performance of his or her tasks have due regard to the risk associated with the processing operations, taking into account the nature, scope, context and purposes of the processing.

SECTION 5
CODES OF CONDUCT AND CERTIFICATION

Article 38

Codes of conduct

1. The Member States, the supervisory authorities, the European Data Protection Board and the Commission shall encourage the drawing up of codes of conduct intended to contribute to the proper application of this Regulation, taking account of the specific features of the various data processing sectors and the specific needs of micro, small and medium-sized enterprises.

1a. Associations and other bodies representing categories of controllers or processors may prepare codes of conduct, or amend or extend such codes, for the purpose of specifying the application of provisions of this Regulation, such as:

(a) fair and transparent data processing;

(aa) the legitimate interests pursued by controllers in specific contexts;

(b) the collection of data;

(bb) the pseudonymisation of personal data;

(c) the information of the public and of data subjects;

(d) the exercise of the rights of data subjects;

(e) information and protection of children and the way to collect the consent of the holder of parental responsibility over the child;

(ee) measures and procedures referred to in Articles 22 and 23 and measures to ensure security of processing referred to in Article 30;

(ef) notification of personal data breaches to supervisory authorities and communication of such breaches to data subjects;

(f) transfer of personal data to third countries or international organisations;

(g) (…)

(h) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with respect to the processing of personal data, without prejudice to the rights of the data subjects pursuant to Articles 73 and 75.

1ab. In addition to adherence by controller or processor subject to the regulation, codes of conduct approved pursuant to paragraph 2 and having general validity pursuant to paragraph 4 may also be adhered to by controllers or processors that are not subject to this Regulation according to Article 3 in order to provide appropriate safeguards within the framework of personal data transfers to third countries or international organisations under the terms referred to in Article 42(2)(d). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards including as regards data subjects' rights.

1b. Such a code of conduct pursuant to paragraph 1a shall contain mechanisms which enable the body referred to in paragraph 1 of article 38a to carry out the mandatory monitoring of compliance with its provisions by the controllers or processors which undertake to apply it, without prejudice to the tasks and powers of the supervisory authority which is competent pursuant to Article 51 or 51a.

2. Associations and other bodies referred to in paragraph 1a which intend to prepare a code of conduct or to amend or extend an existing code, shall submit the draft code to the supervisory authority which is competent pursuant to Article 51. The supervisory authority shall give an opinion on whether the draft code, or amended or extended code is in compliance with this Regulation and shall approve such draft, amended or extended code if it finds that it provides sufficient appropriate safeguards.

2a. Where the opinion referred to in paragraph 2 confirms that the code of conduct, or amended or extended code, is in compliance with this Regulation and the code is approved, and if the code of conduct does not relate to processing activities in several Member States, the supervisory authority shall register and publish the code.

2b. Where the draft code of conduct relates to processing activities in several Member States, the supervisory authority competent pursuant to Article 51 shall, before approval, submit it in the procedure referred to in Article 57 to the European Data Protection Board which shall give an opinion on whether the draft code, or amended or extended code, is in compliance with this Regulation or, in the situation referred to in paragraph 1ab, provides appropriate safeguards.

3. Where the opinion referred to in paragraph 2b confirms that the codes of conduct, or amended or extended codes, is in compliance with this Regulation, or, in the situation referred to in paragraph 1ab, provides appropriate safeguards, the European Data Protection Board shall submit its opinion to the Commission.

4. The Commission may adopt implementing acts for deciding that the approved codes of conduct and amendments or extensions to existing approved codes of conduct submitted to it pursuant to paragraph 3 have general validity within the Union. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

5. The Commission shall ensure appropriate publicity for the approved codes which have been decided as having general validity in accordance with paragraph 4.

5a. The European Data Protection Board shall collect all approved codes of conduct and amendments thereto in a register and shall make them publicly available through any appropriate means.

Article 38a

Monitoring of approved codes of conduct

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 52 and 53, the monitoring of compliance with a code of conduct pursuant to Article 38, may be carried out by a body which has an appropriate level of expertise in relation to the subject-matter of the code and is accredited for this purpose by the competent supervisory authority.

2. A body referred to in paragraph 1 may be accredited for this purpose if:

   (a) it has demonstrated its independence and expertise in relation to the subject-matter of the code to the satisfaction of the competent supervisory authority;

   (b) it has established procedures which allow it to assess the eligibility of controllers and processors concerned to apply the code, to monitor their compliance with its provisions and to periodically review its operation;

   (c) it has established procedures and structures to deal with complaints about infringements of the code or the manner in which the code has been, or is being, implemented by a controller or processor, and to make these procedures and structures transparent to data subjects and the public;

(d) it demonstrates to the satisfaction of the competent supervisory authority that its tasks and duties do not result in a conflict of interests.

3. The competent supervisory authority shall submit the draft criteria for accreditation of a body referred to in paragraph 1 to the European Data Protection Board pursuant to the consistency mechanism referred to in Article 57.

4. Without prejudice to the tasks and powers of the competent supervisory authority and the provisions of Chapter VIII, a body referred to in paragraph 1 shall, subject to adequate safeguards, take appropriate action in cases of infringement of the code by a controller or processor, including suspension or exclusion of the controller or processor concerned from the code. It shall inform the competent supervisory authority of such actions and the reasons for taking them.

5. The competent supervisory authority shall revoke the accreditation of a body referred to in paragraph 1 if the conditions for accreditation are not, or no longer, met or actions taken by the body are not in compliance with this Regulation.

6. This article shall not apply to the processing of personal data carried out by public authorities and bodies.

Article 39

Certification

1. The Member States, the supervisory authorities, the European Data Protection Board and the Commission shall encourage, in particular at Union level, the establishment of data protection certification mechanisms and of data protection seals and marks, for the purpose of demonstrating compliance with this Regulation of processing operations carried out by controllers and processors. The specific needs of micro, small and medium-sized enterprises shall be taken into account.

1a. In addition to adherence by controllers or processors subject to this Regulation, data protection certification mechanisms, seals or marks approved pursuant to paragraph 2a may also be established for the purpose of demonstrating the existence of appropriate safeguards provided by controllers or processors that are not subject to this Regulation according to Article 3 within the framework of personal data transfers to third countries or international organisations under the terms referred to in Article 42(2)(e). Such controllers or processors shall make binding and enforceable commitments, via contractual or other legally binding instruments, to apply those appropriate safeguards, including as regards data subjects' rights.

1b. The certification shall be voluntary and available via a process that is transparent.

2. A certification pursuant to this Article does not reduce the responsibility of the controller or the processor for compliance with this Regulation and is without prejudice to the tasks and powers of the supervisory authority which is competent pursuant to Article 51 or 51a.

2a. A certification pursuant to this Article shall be issued by the certification bodies referred to in Article 39a, or by the competent supervisory authority on the basis of the criteria approved by the competent supervisory authority or, pursuant to Article 57, the European Data Protection Board. In the latter case, the criteria approved by the European Data Protection Board may result in a common certification, the European Data Protection Seal.

3 (new). The controller or processor which submits its processing to the certification mechanism shall provide the certification body referred to in Article 39a, or where applicable, the competent supervisory authority, with all information and access to its processing activities which are necessary to conduct the certification procedure.

4. The certification shall be issued to a controller or processor for a maximum period of 3 years and may be renewed under the same conditions as long as the relevant requirements continue to be met. It shall be withdrawn, where applicable, by the certification bodies referred to in Article 39a, or by the competent supervisory authority where the requirements for the certification are not or no longer met.

5. The European Data Protection Board shall collect all certification mechanisms and data protection seals and marks in a register and shall make them publicly available through any appropriate means.

Article 39a

Certification body and procedure

1. Without prejudice to the tasks and powers of the competent supervisory authority under Articles 52 and 53, the certification shall be issued and renewed, after informing the supervisory authority in order to allow the exercise of its powers pursuant to Article 53(1b)(fa) where necessary, by a certification body which has an appropriate level of expertise in relation to data protection. Each Member State shall provide whether these certification bodies are accredited by:

   (a) the supervisory authority which is competent according to Article 51 or 51a; and/or

   (b) the National Accreditation Body named in accordance with Regulation (EC) 765/2008 of the European Parliament and the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products in compliance with EN-ISO/IEC 17065/2012 and with the additional requirements established by the supervisory authority which is competent according to Article 51 or 51a.

   2. The certification body referred to in paragraph 1 may be accredited for this purpose only if:

   (a) it has demonstrated its independence and expertise in relation to the subject-matter of the certification to the satisfaction of the competent supervisory authority;

(aa) it has undertaken to respect the criteria referred to in paragraph 2a of Article 39 and approved by the supervisory authority which is competent according to Article 51 or 51a or, pursuant to Article 57, the European Data Protection Board;

(b) it has established procedures for the issuing, periodic review and withdrawal of data protection certification, seals and marks;

(c) it has established procedures and structures to deal with complaints about infringements of the certification or the manner in which the certification has been, or is being, implemented by the controller or processor, and to make these procedures and structures transparent to data subjects and the public;

(d) it demonstrates to the satisfaction of the competent supervisory authority that its tasks and duties do not result in a conflict of interests.

3. The accreditation of the certification bodies referred to in paragraph 1 shall take place on the basis of criteria approved by the supervisory authority which is competent according to Article 51 or 51a or, pursuant to Article 57, the European Data Protection Board. In case of an accreditation pursuant to point (b) of paragraph 1, these requirements complement those envisaged in Regulation 765/2008 and the technical rules that describe the methods and procedures of the certification bodies.

4. The certification body referred to in paragraph 1 shall be responsible for the proper assessment leading to the certification or the withdrawal of such certification without prejudice to the responsibility of the controller or processor for compliance with this Regulation. The accreditation is issued for a maximum period of five years and can be renewed in the same conditions as long as the body meets the requirements.

5. The certification body referred to in paragraph 1 shall provide the competent supervisory authority with the reasons for granting or withdrawing the requested certification.

6. The requirements referred to in paragraph 3 and the criteria referred to in paragraph 2a of Article 39 shall be made public by the supervisory authority in an easily accessible form. The supervisory authorities shall also transmit these to the European Data Protection Board. The European Data Protection Board shall collect all certification mechanisms and data protection seals in a register and shall make them publicly available through any appropriate means.

6a. Without prejudice to the provisions of Chapter VIII, the competent supervisory authority or the National Accreditation Body shall revoke the accreditation it granted to a certification body referred to in paragraph 1 if the conditions for accreditation are not, or no longer, met or actions taken by the body are not in compliance with this Regulation.

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 86, for the purpose of specifying the requirements to be taken into account for the data protection certification mechanisms referred to in paragraph 1 of Article 39.

7a. (…)

8. The Commission may lay down technical standards for certification mechanisms and data protection seals and marks and mechanisms to promote and recognize certification mechanisms and data protection seals and marks. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

CHAPTER V
TRANSFER OF PERSONAL DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Article 40

General principle for transfers

Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation may only take place if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions in this Chapter shall be applied in order to ensure that the level of protection of individuals guaranteed by this Regulation shall not be undermined.

Article 41

Transfers with an adequacy decision

1. A transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, or a territory or one or more specified sectors within that third country, or the international organisation in question ensures an adequate level of protection. Such transfer shall not require any specific authorisation.

2. When assessing the adequacy of the level of protection, the Commission shall, in particular, take account of the following elements:

(a) the rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectorial, including concerning public security, defence, national security and criminal law and the access of public authorities to personal data, as well as the implementation of this legislation, data protection rules professional rules and security measures, including rules for onward transfer of personal data to another third country or international organisation, which are complied with in that country or international organisation, jurisprudential precedents, as well as effective and enforceable data subject rights and effective administrative and judicial redress for the data subjects whose personal data are being transferred;

(b) the existence and effective functioning of one or more independent supervisory authorities in the third country or to which an international organisation is subject, with responsibility for ensuring and enforcing compliance with the data protection rules, including adequate sanctioning powers for assisting and advising the data subjects in exercising their rights and for assisting and advising the data subjects in exercising their rights and for co-operation with the supervisory authorities of the Member States; and

(c) the international commitments the third country or international organisation concerned has entered into, or other obligations arising from legally binding conventions or instruments as well as from its participation in multilateral or regional systems, in particular in relation to the protection of personal data.

3. The Commission, after assessing the adequacy of the level of protection, may decide that a third country, or a territory or one or more specified sectors within that third country, or an international organisation ensures an adequate level of protection within the meaning of paragraph 2. The implementing act shall provide for a mechanism for a periodic review, at least every four years, which shall take into account all relevant developments in the third country or international organisation. The implementing act shall specify its territorial and sectorial application and, where applicable, identify the supervisory authority or authorities mentioned in point(b) of paragraph 2. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 87(2).

3a. (…)

4. (…)

4a. The Commission shall, on an on-going basis, monitor developments in third countries and international organisations that could affect the functioning of decisions adopted pursuant to paragraph 3 and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC.

5. The Commission shall, where available information reveals, in particular following the review referred to in paragraph 3, decide that a third country, or a territory or a specified sector within that third country, or an international organisation no longer ensures an adequate level of protection within the meaning of paragraph 2 and, to the extent necessary, repeal, amend or suspend the decision referred to in paragraph 3 without retro-active effect. The implementing act shall be adopted in accordance with the examination procedure referred to in Article 87(2), or, in cases of extreme urgency, in accordance with the procedure referred to in Article 87(3).

5a. The Commission shall enter into consultations with the third country or international organisation with a view to remedying the situation giving rise to the decision made pursuant to paragraph 5.

6. A decision pursuant to paragraph 5 is without prejudice to transfers of personal data to the third country, or the territory or specified sector within that third country, or the international organisation in question pursuant to Articles 42 to 44.

7. The Commission shall publish in the *Official Journal of the European Union* and on its website a list of those third countries, territories and specified sectors within a third country and international organisations where it has decided that an adequate level of protection is or is no longer ensured.

8. Decisions adopted by the Commission on the basis of Article 25(6) of Directive 95/46/EC shall remain in force until amended, replaced or repealed by a Commission Decision adopted in accordance with paragraph 3 or 5.

Article 42

Transfers by way of appropriate safeguards

1. In the absence of a decision pursuant to paragraph 3 of Article 41, a controller or processor may transfer personal data to a third country or an international organisation only if the controller or processor has adduced appropriate safeguards, and on condition that enforceable data subject rights and effective legal remedies for data subjects are available.

2. The appropriate safeguards referred to in paragraph 1 may be provided for, without requiring any specific authorisation from a supervisory authority, by:

(oa) a legally binding and enforceable instrument between public authorities or bodies; or

(a) binding corporate rules in accordance with Article 43; or

(b) standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 87(2); or

(c) standard data protection clauses adopted by a supervisory authority and approved by the Commission pursuant to the examination procedure referred to in Article 87(2); or

(d) an approved code of conduct pursuant to Article 38 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights; or

(e) an approved certification mechanism pursuant to Article 39 together with binding and enforceable commitments of the controller or processor in the third country to apply the appropriate safeguards, including as regards data subjects' rights.

2a. Subject to the authorisation from the competent supervisory authority, the appropriate safeguards referred to in paragraph 1 may also be provided for, in particular, by:

(a) contractual clauses between the controller or processor and the controller, processor or the recipient of the data in the third country or international organisation; or

(b) provisions to be inserted into administrative arrangements between public authorities or bodies which include enforceable and effective data subject rights.

3. (…)

4. (…)

5. (…)

5a. The supervisory authority shall apply the consistency mechanism referred to in Article 57 in the cases referred to in paragraph 2a.

5b. Authorisations by a Member State or supervisory authority on the basis of Article 26(2) of Directive 95/46/EC shall remain valid until amended, replaced or repealed, if necessary, by that supervisory authority. Decisions adopted by the Commission on the basis of Article 26(4) of Directive 95/46/EC shall remain in force until amended, replaced or repealed, if necessary, by a Commission Decision adopted in accordance with paragraph 2.

Article 43

Transfers by way of binding corporate rules

1. The competent supervisory authority shall approve binding corporate rules in accordance with the consistency mechanism set out in Article 57, provided that they:

   (a) are legally binding and apply to and are enforced by every member concerned of the group of undertakings or groups of enterprises engaged in a joint economic activity, including their employees;

   (b) expressly confer enforceable rights on data subjects with regard to the processing of their personal data;

   (c) fulfil the requirements laid down in paragraph 2.

2. The binding corporate rules referred to in paragraph 1 shall specify at least:

   (a) the structure and contact details of the concerned group and of each of its members;

   (b) the data transfers or set of transfers, including the categories of personal data, the type of processing and its purposes, the type of data subjects affected and the identification of the third country or countries in question;

   (c) their legally binding nature, both internally and externally;

   (d) the application of the general data protection principles, in particular purpose limitation, data minimisation, limited storage periods, data quality, data protection by design and by default, legal basis for the processing, processing of special categories of personal data, measures to ensure data security, and the requirements in respect of onward transfers to bodies not bound by the binding corporate rules;

(e) the rights of data subjects in regard to the processing of their personal data and the means to exercise these rights, including the right not to be subject to decisions based solely on automated processing, including profiling in accordance with Article 20, the right to lodge a complaint before the competent supervisory authority and before the competent courts of the Member States in accordance with Article 75, and to obtain redress and, where appropriate, compensation for a breach of the binding corporate rules;

(f) the acceptance by the controller or processor established on the territory of a Member State of liability for any breaches of the binding corporate rules by any member concerned not established in the Union; the controller or the processor may only be exempted from this liability, in whole or in part, on proving that that member is not responsible for the event giving rise to the damage;

(g) how the information on the binding corporate rules, in particular on the provisions referred to in points (d), (e) and (f) of this paragraph is provided to the data subjects in addition to Articles 14 and 14a;

(h) the tasks of any data protection officer designated in accordance with Article 35 or any other person or entity in charge of the monitoring compliance with the binding corporate rules within the group, as well as monitoring the training and complaint handling;

(hh) the complaint procedures;

(i) the mechanisms within the group for ensuring the verification of compliance with the binding corporate rules. Such mechanisms shall include data protection audits and methods for ensuring corrective actions to protect the rights of the data subject. Results of such verification should be communicated to the person or entity referred under point (h) and to the board of the controlling undertaking or of the group of enterprises, and should be available upon request to the competent supervisory authority;

(j) the mechanisms for reporting and recording changes to the rules and reporting these changes to the supervisory authority;

(k) the co-operation mechanism with the supervisory authority to ensure compliance by any member of the group, in particular by making available to the supervisory authority the results of verifications of the measures referred to in point (i) of this paragraph;

(l) the mechanisms for reporting to the competent supervisory authority any legal requirements to which a member of the group is subject in a third country which are likely to have a substantial adverse effect on the guarantees provided by the binding corporate rules; and

(m) the appropriate data protection training to personnel having permanent or regular access to personal data.

2a. (…)

3. (…)

4. The Commission may specify the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules within the meaning of this Article. Those implementing acts shall be adopted in accordance with the examination procedure set out in Article 87(2).

Article 43a (new)

Transfers or disclosures not authorised by Union law

1. Any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State, without prejudice to other grounds for transfer pursuant to this Chapter.

Article 44

Derogations for specific situations

1. In the absence of an adequacy decision pursuant to paragraph 3 of Article 41, or of appropriate safeguards pursuant to Article 42, including binding corporate rules, a transfer or a set of transfers of personal data to a third country or an international organisation may take place only on condition that:

   (a) the data subject has explicitly consented to the proposed transfer, after having been informed of the possible risks of such transfers for the data subject due to the absence of an adequacy decision and appropriate safeguards; or

   (b) the transfer is necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken at the data subject's request; or

   (c) the transfer is necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and another natural or legal person; or

   (d) the transfer is necessary for important reasons of public interest; or

   (e) the transfer is necessary for the establishment, exercise or defence of legal claims; or

(f) the transfer is necessary in order to protect the vital interests of the data subject or of other persons, where the data subject is physically or legally incapable of giving consent; or

(g) the transfer is made from a register which according to Union or Member State law is intended to provide information to the public and which is open to consultation either by the public in general or by any person who can demonstrate a legitimate interest, but only to the extent that the conditions laid down in Union or Member State law for consultation are fulfilled in the particular case; or

(h) Where a transfer could not be based on a provision in Articles 41 or 42, including binding corporate rules, and none of the derogations for a specific situation pursuant to points (a) to (g) is applicable, a transfer to a third country or an international organisation may take place only if the transfer is not repetitive, concerns only a limited number of data subjects, is necessary for the purposes of compelling legitimate interests pursued by the controller which are not overridden by the interests or rights and freedoms of the data subject, where the controller has assessed all the circumstances surrounding the data transfer and based on this assessment adduced suitable safeguards with respect to the protection of personal data. The controller shall inform the supervisory authority of the transfer. The controller shall in addition to the information referred to in Article 14 and Article 14a, inform the data subject about the transfer and on the compelling legitimate interests pursued by the controller.

2. A transfer pursuant to point (g) of paragraph 1 shall not involve the entirety of the personal data or entire categories of the personal data contained in the register. When the register is intended for consultation by persons having a legitimate interest, the transfer shall be made only at the request of those persons or if they are to be the recipients.

3. (…)

4. Points (a), (b), (c) and (h) of paragraph 1 shall not apply to activities carried out by public authorities in the exercise of their public powers.

5. The public interest referred to in point (d) of paragraph 1 must be recognised in Union law or in the law of the Member State to which the controller is subject.

5a. In the absence of an adequacy decision, Union law or Member State law may, for important reasons of public interest, expressly set limits to the transfer of specific categories of personal data to a third country or an international organisation. Member States shall notify such provisions to the Commission.

6. The controller or processor shall document the assessment as well as the suitable safeguards referred to in point (h) of paragraph 1 in the records referred to in Article 28.

7. (…).

Article 45

International co-operation for the protection of personal data

1. In relation to third countries and international organisations, the Commission and supervisory authorities shall take appropriate steps to:

   (a) develop international co-operation mechanisms to facilitate the effective enforcement of legislation for the protection of personal data;

   (b) provide international mutual assistance in the enforcement of legislation for the protection of personal data, including through notification, complaint referral, investigative assistance and information exchange, subject to appropriate safeguards for the protection of personal data and other fundamental rights and freedoms;

(c) engage relevant stakeholders in discussion and activities aimed at furthering international co-operation in the enforcement of legislation for the protection of personal data;

(d) promote the exchange and documentation of personal data protection legislation and practice, including on jurisdictional conflicts with third countries.

2. (…)

CHAPTER VI
INDEPENDENT SUPERVISORY AUTHORITIES

SECTION 1
INDEPENDENT STATUS

Article 46

Supervisory authority

1. Each Member State shall provide that one or more independent public authorities are responsible for monitoring the application of this Regulation, in order to protect the fundamental rights and freedoms of natural persons in relation to the processing of their personal data and to facilitate the free flow of personal data within the Union.

1a. Each supervisory authority shall contribute to the consistent application of this Regulation throughout the Union. For this purpose, the supervisory authorities shall co-operate with each other and the Commission in accordance with Chapter VII.

2. Where in a Member State more than one supervisory authority are established, that Member State shall designate the supervisory authority which shall represent those authorities in the European Data Protection Board and shall set out the mechanism to ensure compliance by the other authorities with the rules relating to the consistency mechanism referred to in Article 57.

3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to this Chapter, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Article 47

Independence

1. Each supervisory authority shall act with complete independence in performing the tasks and exercising the powers entrusted to it in accordance with this Regulation.
2. The member or members of each supervisory authority shall, in the performance of their tasks and exercise of their powers in accordance with this Regulation, remain free from external influence, whether direct or indirect and neither seek nor take instructions from anybody.

3. Members of the supervisory authority shall refrain from any action incompatible with their duties and shall not, during their term of office, engage in any incompatible occupation, whether gainful or not.

4. (…)

5. Each Member State shall ensure that each supervisory authority is provided with the human, technical and financial resources, premises and infrastructure necessary for the effective performance of its tasks and exercise of its powers, including those to be carried out in the context of mutual assistance, co-operation and participation in the European Data Protection Board.

6. Each Member State shall ensure that each supervisory authority chooses and has its own staff which shall be subject to the exclusive direction of the member or members of the supervisory authority.

7. Member States shall ensure that each supervisory authority is subject to financial control which shall not affect its independence. Member States shall ensure that each supervisory authority has separate, public, annual budgets, which may be part of the overall state or national budget.

Article 48

General conditions for the members of the supervisory authority

1. Member States shall provide that each member of a supervisory authority must be appointed by means of a transparent procedure either:
   - by the parliament; or
   - the government; or
   - the head of State of the Member State concerned; or
   - by an independent body entrusted by Member State law with the appointment.

2. The member or members shall have the qualifications, experience and skills, notably in the area of protection of personal data, required to perform their duties and exercise their powers.

3. The duties of a member shall end in the event of the expiry of the term of office, resignation or compulsory retirement in accordance with the law of the Member State concerned.

4. A member may only be dismissed in cases of serious misconduct or if the member no longer fulfils the conditions required for the performance of the duties.

Article 49

Rules on the establishment of the supervisory authority

1. Each Member State shall provide by law for:

   (a) the establishment of each supervisory authority;

   (b) the qualifications and eligibility conditions required to be appointed as member of each supervisory authority;

   (c) the rules and procedures for the appointment of the members of each supervisory authority;

(d) the duration of the term of the member or members of each supervisory authority which shall not be less than four years, except for the first appointment after entry into force of this Regulation, part of which may take place for a shorter period where this is necessary to protect the independence of the supervisory authority by means of a staggered appointment procedure;

(e) whether and, if so, for how many terms the member or members of each supervisory authority shall be eligible for reappointment;

(f) the conditions governing the obligations of the member or members and staff of each supervisory authority, prohibitions on actions, occupations and benefits incompatible therewith during and after the term of office and rules governing the cessation of employment.

(g) (…)

2. The member or members and the staff of each supervisory authority shall, in accordance with Union or Member State law, be subject to a duty of professional secrecy both during and after their term of office, with regard to any confidential information which has come to their knowledge in the course of the performance of their tasks or exercise of their powers. During their term of office, this duty of professional secrecy shall in particular apply to reporting by individuals of infringements of this Regulation.

Article 50

Professional secrecy

(…)

SECTION 2
COMPETENCE, TASKS AND POWERS

Article 51

Competence

1. Each supervisory authority shall be competent to perform the tasks and exercise the powers conferred on it in accordance with this Regulation on the territory of its own Member State.

2. Where the processing is carried out by public authorities or private bodies acting on the basis of points (c) or (e) of Article 6(1), the supervisory authority of the Member State concerned shall be competent. In such cases Article 51a does not apply.

3. Supervisory authorities shall not be competent to supervise processing operations of courts acting in their judicial capacity.

Article 51a

Competence of the lead supervisory authority

1. Without prejudice to Article 51, the supervisory authority of the main establishment or of the single establishment of the controller or processor shall be competent to act as lead supervisory authority for the cross-border processing of this controller or processor in accordance with the procedure provided in Article 54a.

2a. By derogation from paragraph 1, each supervisory authority shall be competent to deal with a complaint lodged with it or to deal with a possible infringement of this Regulation, if the subject matter relates only to an establishment in its Member State or substantially affects data subjects only in its Member State.

2b. In the cases referred to in paragraph 2a, the supervisory authority shall inform the lead supervisory authority without delay on this matter. Within a period of three weeks after being informed the lead supervisory authority shall decide whether or not it will deal with the case in accordance with the procedure provided in Article 54a, taking into account whether or not there is an establishment of the controller or processor in the Member State of which the supervisory authority informed it.

2c. Where the lead supervisory authority decides to deal with the case, the procedure provided in Article 54a shall apply. The supervisory authority which informed the lead supervisory authority may submit to the lead supervisory authority a draft for a decision. The lead supervisory authority shall take utmost account of that draft when preparing the draft decision referred to in paragraph 2 of Article 54a.

2d. In case the lead supervisory authority decides not to deal with it, the supervisory authority which informed the lead supervisory authority shall deal with the case according to Articles 55 and 56.

3. The lead supervisory authority shall be the sole interlocutor of the controller or processor for the cross-border processing of that controller or processor.

Article 52

Tasks

1. Without prejudice to other tasks set out under this Regulation, each supervisory authority shall on its territory:

   (a) monitor and enforce the application of this Regulation;

   (aa) promote public awareness and understanding of the risks, rules, safeguards and rights in relation to the processing of personal data. Activities addressed specifically to children shall receive specific attention;

(ab) advise, in accordance with national law, the national parliament, the government, and other institutions and bodies on legislative and administrative measures relating to the protection of individuals' rights and freedoms with regard to the processing of personal data;

(ac) promote the awareness of controllers and processors of their obligations under this Regulation;

(ad) upon request, provide information to any data subject concerning the exercise of their rights under this Regulation and, if appropriate, co-operate with the supervisory authorities in other Member States to this end;

(b) deal with complaints lodged by a data subject, or by a body, organisation or association in accordance with Article 76, and investigate, to the extent appropriate, the subject matter of the complaint and inform the complainant of the progress and the outcome of the investigation within a reasonable period, in particular if further investigation or coordination with another supervisory authority is necessary;

(c) cooperate with, including sharing information and provide mutual assistance to other supervisory authorities with a view to ensuring the consistency of application and enforcement of this Regulation;

(d) conduct investigations on the application of this Regulation, including on the basis of information received from another supervisory authority or other public authority;

(e) monitor relevant developments, insofar as they have an impact on the protection of personal data, in particular the development of information and communication technologies and commercial practices;

(f) adopt standard contractual clauses referred to in Article 26(2c) and 42(2)(c);

(fa) establish and maintain a list in relation to the requirement for data protection impact assessment pursuant to Article 33(2a);

(g) give advice on the processing operations referred to in Article 34(3);

(ga) encourage the drawing up of codes of conduct pursuant to Article 38 and give an opinion and approve such codes of conduct which provide sufficient safeguards, pursuant to Article 38 (2);

(gb) encourage the establishment of data protection certification mechanisms and of data protection seals and marks pursuant to Article 39(1), and approve the criteria of certification pursuant to Article 39 (2a);

(gc) where applicable, carry out a periodic review of certifications issued in accordance with Article 39(4);

(h) draft and publish the criteria for accreditation of a body for monitoring codes of conduct pursuant to Article 38 a and of a certification body pursuant to Article 39a;

(ha) conduct the accreditation of a body for monitoring codes of conduct pursuant to Article 38a and of a certification body pursuant to Article 39a;

(hb) authorise contractual clauses and provisions referred to in Article 42(2a);

(i) approve binding corporate rules pursuant to Article 43;

(j) contribute to the activities of the European Data Protection Board;

(jb) to keep internal records of breaches of this Regulation and of measures taken, in particular warnings issued and sanctions imposed;

(k) fulfil any other tasks related to the protection of personal data.

2. (…)

3. (…)

4. Each supervisory authority shall facilitate the submission of complaints referred to in point (b) of paragraph 1, by measures such as a complaint submission form, which can be completed also electronically, without excluding other means of communication.

5. The performance of the tasks of each supervisory authority shall be free of charge for the data subject and for the data protection officer, if any.

6. Where requests are manifestly unfounded or excessive, in particular because of their repetitive character, the supervisory authority may charge a reasonable fee based on administrative costs, or refuse to act on the request. The supervisory authority shall bear the burden of demonstrating the manifestly unfounded or excessive character of the request.

Article 53

Powers

1. Each supervisory authority shall have the following investigative powers:

(a) to order the controller and the processor, and, where applicable, the controller's or the processor's representative to provide any information it requires for the performance of its tasks;

(aa) to carry out investigations in the form of data protection audits;

(ab) to carry out a review on certifications issued pursuant to Article 39(4);

(b) (…)

(c) (…)

(d) to notify the controller or the processor of an alleged infringement of this Regulation;

(da) to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its tasks;

(db) to obtain access to any premises of the controller and the processor, including to any data processing equipment and means, in conformity with Union law or Member State procedural law.

1b. Each supervisory authority shall have the following corrective powers:

(a) to issue warnings to a controller or processor that intended processing operations are likely to infringe provisions of this Regulation;

(b) to issue reprimands to a controller or a processor where processing operations have infringed provisions of this Regulation;

(ca) to order the controller or the processor to comply with the data subject's requests to exercise his or her rights pursuant to this Regulation;

(d) to order the controller or processor to bring processing operations into compliance with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;

(da) to order the controller to communicate a personal data breach to the data subject;

(e) to impose a temporary or definitive limitation including a ban on processing;

(f) to order the rectification, restriction or erasure of data pursuant to Articles 16, 17 and 17a and the notification of such actions to recipients to whom the data have been disclosed pursuant to Articles 17(2a) and 17b;

(fa) (new) to withdraw a certification or to order the certification body to withdraw a certification issued pursuant to Article 39 and 39a, or to order the certification body not to issue certification if the requirements for the certification are not or no longer met;

(g) to impose an administrative fine pursuant to Articles 79, in addition to, or instead of measures referred to in this paragraph, depending on the circumstances of each individual case;

(h) to order the suspension of data flows to a recipient in a third country or to an international organisation.

(i) (…)

(j) (…)

1c. Each supervisory authority shall have the following authorisation and advisory powers:

(a) to advise the controller in accordance with the prior consultation procedure referred to in Article 34;

(aa) to issue, on its own initiative or on request, opinions to the national parliament, the Member State government or, in accordance with national law, to other institutions and bodies as well as to the public on any issue related to the protection of personal data;

(ab) to authorise processing referred to in Article 34(7a), if the law of the Member State requires such prior authorisation;

(ac) to issue an opinion and approve draft codes of conduct pursuant to Article 38(2);

(ad) to accredit certification bodies pursuant to Article 39a;

(ae) to issue certifications and approve criteria of certification in accordance with Article 39(2a);

(b) to adopt standard data protection clauses referred to in Article 26(2c) and in point (c) of Article 42(2);

(c) to authorise contractual clauses referred to in point (a) of Article 42(2a);

(ca) to authorise administrative agreements referred to in point (d) of Article 42(2a);

(d) to approve binding corporate rules pursuant to Article 43.

2. The exercise of the powers conferred on the supervisory authority pursuant to this Article shall be subject to appropriate safeguards, including effective judicial remedy and due process, set out in Union and Member State law in accordance with the Charter of Fundamental Rights of the European Union.

3. Each Member State shall provide by law that its supervisory authority shall have the power to bring infringements of this Regulation to the attention of the judicial authorities and where appropriate, to commence or engage otherwise in legal proceedings, in order to enforce the provisions of this Regulation.

4. Each Member State may provide by law that its supervisory authority shall have additional powers than those referred to in paragraphs 1, 1b and 1c. These exercise of these powers shall not impair the effective functioning of the provisions of Chapter VII.

Article 54

Activity Report

Each supervisory authority shall draw up an annual report on its activities, which may include a list of types of notified breaches and types of imposed sanctions. The report shall be transmitted to the national Parliament, the government and other authorities as designated by national law. It shall be made available to the public, the Commission and the European Data Protection Board.

CHAPTER VII
CO-OPERATION AND CONSISTENCY

SECTION 1
CO-OPERATION

Article 54a

Cooperation between the lead supervisory authority and other concerned supervisory authorities

1. The lead supervisory authority shall cooperate with the other concerned supervisory authorities in accordance with this article in an endeavour to reach consensus. The lead supervisory authority and the concerned supervisory authorities shall exchange all relevant information with each other.

1a. The lead supervisory authority may request at any time other concerned supervisory authorities to provide mutual assistance pursuant to Article 55 and may conduct joint operations pursuant to Article 56, in particular for carrying out investigations or for monitoring the implementation of a measure concerning a controller or processor established in another Member State.

2. The lead supervisory authority shall, without delay communicate the relevant information on the matter to the other concerned supervisory authorities. It shall without delay submit a draft decision to the other concerned supervisory authorities for their opinion and take due account of their views.

3. Where any of the other concerned supervisory authorities within a period of four weeks after having been consulted in accordance with paragraph 2, expresses a relevant and reasoned objection to the draft decision, the lead supervisory authority shall, if it does not follow the objection or is of the opinion it is not relevant and reasoned, submit the matter to the consistency mechanism referred to in Article 57.

3a. Where the lead supervisory authority intends to follow the objection made, it shall submit to the other concerned supervisory authorities a revised draft decision for their opinion. This revised draft decision shall be subject to the procedure referred to in paragraph 3 within a period of two weeks.

4. Where none of the other concerned supervisory authorities has objected to the draft decision submitted by the lead supervisory authority within the period referred to in paragraphs 3 and 3a, the lead supervisory authority and the concerned supervisory authorities shall be deemed to be in agreement with this draft decision and shall be bound by it.

4a. The lead supervisory authority shall adopt and notify the decision to the main establishment or single establishment of the controller or processor, as the case may be and inform the other concerned supervisory authorities and the European Data Protection Board of the decision in question including a summary of the relevant facts and grounds. The supervisory authority to which a complaint has been lodged shall inform the complainant on the decision.

4b. By derogation from paragraph 4a, where a complaint is dismissed or rejected, the supervisory authority to which the complaint was lodged shall adopt the decision and notify it to the complainant and shall inform the controller thereof.

4bb. Where the lead supervisory authority and the concerned supervisory authorities are in agreement to dismiss or reject parts of a complaint and to act on other parts of that complaint, a separate decision shall be adopted for each of those parts of the matter.The lead supervisory authority shall adopt the decision for the part concerning actions in relation to the controller and notify it to the main establishment or single establishment of the controller or processor on the territory of its Member State and shall inform the complainant thereof, while the supervisory authority of the complainant shall adopt the decision for the part concerning dismissal or rejection of that complaint and notify it on that complainant and shall inform the controller or processor thereof.

4c. After being notified of the decision of the lead supervisory authority pursuant to paragraph 4a and 4bb, the controller or processor shall take the necessary measures to ensure compliance with the decision as regards the processing activities in the context of all its establishments in the Union. The controller or processor shall notify the measures taken for complying with the decision to the lead supervisory authority, which shall inform the other concerned supervisory authorities.

4d. Where, in exceptional circumstances, a supervisory authority concerned has reasons to consider that there is an urgent need to act in order to protect the interests of data subjects, the urgency procedure referred to in Article 61 shall apply.

5. The lead supervisory authority and the other concerned supervisory authorities shall supply the information required under this Article to each other by electronic means, using a standardised format.

Article 55

Mutual assistance

1. Supervisory authorities shall provide each other with relevant information and mutual assistance in order to implement and apply this Regulation in a consistent manner, and shall put in place measures for effective co-operation with one another. Mutual assistance shall cover, in particular, information requests and supervisory measures, such as requests to carry out prior authorisations and consultations, inspections and investigations.

2. Each supervisory authority shall take all appropriate measures required to reply to the request of another supervisory authority without undue delay and no later than one month after having received the request. Such measures may include, in particular, the transmission of relevant information on the conduct of an investigation.

3. The request for assistance shall contain all the necessary information, including the purpose of the request and reasons for the request. Information exchanged shall be used only for the purpose for which it was requested.

4. A supervisory authority to which a request for assistance is addressed may not refuse to comply with it unless:

   (a) it is not competent for the subject-matter of the request or for the measures it is requested to execute; or

   (b) compliance with the request would be incompatible with the provisions of this Regulation or with Union or Member State law to which the supervisory authority receiving the request is subject.

5. The requested supervisory authority shall inform the requesting supervisory authority of the results or, as the case may be, of the progress or the measures taken in order to respond to the request. In cases of a refusal under paragraph 4, it shall explain its reasons for refusing the request.

6. Supervisory authorities shall, as a rule, supply the information requested by other supervisory authorities by electronic means, using a standardised format.

7. No fee shall be charged for any action taken following a request for mutual assistance. Supervisory authorities may agree with other supervisory authorities rules for indemnification by other supervisory authorities for specific expenditure arising from the provision of mutual assistance in exceptional circumstances.

8. Where a supervisory authority does not provide the information referred to in paragraph 5 within one month of receiving the request of another supervisory authority, the requesting supervisory authority may adopt a provisional measure on the territory of its Member State in accordance with Article 51(1). In this case, the urgent need to act under Article 61(1) shall be presumed to be met and require an urgent binding decision from the European Data Protection Board pursuant to Article 61(2).

9. (…)

10. The Commission may specify the format and procedures for mutual assistance referred to in this article and the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in paragraph 6. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

Article 56

Joint operations of supervisory authorities

1. The supervisory authorities shall, where appropriate, conduct joint operations including joint investigations and joint enforcement measures in which members or staff from other Member States' supervisory authorities are involved.

2. In cases where the controller or processor has establishments in several Member States or where a significant number of data subjects in more than one Member States are likely to be substantially affected by processing operations, a supervisory authority of each of those Member States shall have the right to participate in the joint operations, as appropriate. The competent supervisory authority in accordance with Article 51a (1) or 51a(2c) shall invite the supervisory authority of each of those Member States to take part in the joint operations concerned and respond without delay to the request of a supervisory authority to participate.

3. A supervisory authority may, in compliance with its own Member State law, and with the seconding supervisory authority’s authorisation, confer powers, including investigative powers on the seconding supervisory authority’s members or staff involved in joint operations or, in so far as the law of the Member State of the host supervisory authority permits, allow the seconding supervisory authority’s members or staff to exercise their investigative powers in accordance with the law of the Member State of the seconding supervisory authority. Such investigative powers may be exercised only under the guidance and in the presence of members or staff of the host supervisory authority. The seconding supervisory authority's members or staff shall be subject to the host supervisory authority's national law.

3a. Where, in accordance with paragraph 1, staff of a seconding supervisory authority are operating in another Member State, the Member State of the host supervisory authority shall assume responsibility for their actions, including liability, for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.

3b. The Member State in whose territory the damage was caused shall make good such damage under the conditions applicable to damage caused by its own staff. The Member State of the seconding supervisory authority whose staff has caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the persons entitled on their behalf.

3c. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3b, each Member State shall refrain, in the case provided for in paragraph 1, from requesting reimbursement of damages it has sustained from another Member State.

4. (…)

5. Where a joint operation is intended and a supervisory authority does not comply within one month with the obligation laid down in the second sentence of paragraph 2, the other supervisory authorities may adopt a provisional measure on the territory of its Member State in accordance with Article 51. In this case, the urgent need to act under Article 61(1) shall be presumed to be met and require an opinion or an urgent binding decision from the European Data Protection Board pursuant to Article 61(2).

6. (…)

SECTION 2
CONSISTENCY

Article 57

Consistency mechanism

1. In order to contribute to the consistent application of this Regulation throughout the Union, the supervisory authorities shall co-operate with each other and, where relevant, with the Commission, through the consistency mechanism as set out in this section.

Article 58

Opinion by the European Data Protection Board

1. The European Data Protection Board shall issue an opinion whenever a competent supervisory authority intends to adopt any of the measures below. To that end, the competent supervisory authority shall communicate the draft decision to the European Data Protection Board, when it:

   c) aims at adopting a list of the processing operations subject to the requirement for a data protection impact assessment pursuant to Article 33(2a); or

   (ca) concerns a matter pursuant to Article 38(2b) whether a draft code of conduct or an amendment or extension to a code of conduct is in compliance with this Regulation; or

   (cb) aims at approving the criteria for accreditation of a body pursuant to paragraph 3 of Article 38a or a certification body pursuant to paragraph 3 of Article 39a; or

   (d) aims at determining standard data protection clauses referred to in point (c) of Article 42(2) and paragraph (2c) of Article 26; or

(e) aims to authorising contractual clauses referred to in Article 42(2a(a)); or

(f) aims at approving binding corporate rules within the meaning of Article 43.

2. Any supervisory authority, the Chair of the European Data Protection Board or the Commission may request that any matter of general application or producing effects in more than one Member State be examined by the European Data Protection Board with a view to obtaining an opinion, in particular where a competent supervisory authority does not comply with the obligations for mutual assistance in accordance with Article 55 or for joint operations in accordance with Article 56.

3. In the cases referred to in paragraphs 1 and 2, the European Data Protection Board shall issue an opinion on the matter submitted to it provided that it has not already issued an opinion on the same matter. This opinion shall be adopted within eight weeks by simple majority of the members of the European Data Protection Board. This period may be extended by a further six weeks, taking into account the complexity of the subject matter. Regarding the draft decision referred to in paragraph 1 circulated to the members of the Board in accordance with paragraph 6, a member which has not objected within a reasonable period indicated by the Chair, shall be deemed to be in agreement with the draft decision.

4. (…)

5. Supervisory authorities and the Commission shall without undue delay electronically communicate to the European Data Protection Board, using a standardised format any relevant information, including as the case may be a summary of the facts, the draft decision, the grounds which make the enactment of such measure necessary, and the views of other concerned supervisory authorities.

6. The chair of the European Data Protection Board shall without undue delay electronically inform:

(a) the members of the European Data Protection Board and the Commission of any relevant information which has been communicated to it using a standardised format. The secretariat of the European Data Protection Board shall, where necessary, provide translations of relevant information.

(b) the supervisory authority referred to, as the case may be, in paragraphs 1 and 2, and the Commission of the opinion and make it public.

7. (…)

7a. Within the period referred to in paragraph 3 the competent supervisory authority shall not adopt its draft decision referred to in paragraph 1.

7b. (…)

8. The supervisory authority referred to in paragraph 1 shall take utmost account of the opinion of the European Data Protection Board and shall within two weeks after receiving the opinion, electronically communicate to the chair of the European Data Protection Board whether it maintains or will amend its draft decision and, if any, the amended draft decision, using a standardised format.

9. Where the supervisory authority concerned informs the chair of the European Data Protection Board within the period referred to in paragraph 8 that it does not intend to follow the opinion of the Board, in whole or in part, providing the relevant grounds, paragraph 1 of Article 58a shall apply.

Article 58a

Dispute Resolution by the European Data Protection Board

1. In order to ensure the correct and consistent application of this Regulation in individual cases, the European Data Protection Board shall adopt a binding decision in the following cases:

(a) Where, in a case referred to in paragraph 3 of Article 54a, a supervisory authority concerned has expressed a relevant and reasoned objection to a draft decision of the lead authority or the lead authority has rejected an objection as being not relevant and/or reasoned. The binding decision shall concern all the matters which are the subject of the relevant and reasoned objection, in particular whether there is an infringement of the Regulation;

(b) Where there are conflicting views on which of the concerned supervisory authorities is competent for the main establishment;

(d) Where a competent supervisory authority does not request the opinion of the European Data Protection Board in the cases mentioned in paragraph 1 of Article 58, or does not follow the opinion of the European Data Protection Board issued Article 58. In that case, any supervisory authority concerned or the Commission may communicate the matter to the European Data Protection Board.

2. The decision referred to in paragraph 1 shall be adopted within one month from the referral of the subject-matter by a two-third majority of the members of the Board. This period may be extended by a further month on account of the complexity of the subject-matter. The decision referred to in paragraph 1 shall be reasoned and addressed to the lead supervisory authority and all the concerned supervisory authorities and binding on them.

3. In case the Board has been unable to adopt a decision within the periods referred to in paragraph 2, it shall adopt its decision within two weeks following the expiration of the second month referred to in paragraph 2 by a simple majority of the members of the Board. In case the members of the Board are split, the decision shall by adopted by the vote of its Chair.

4. The concerned supervisory authorities shall not adopt a decision on the subject matter submitted to the Board under paragraph 1 during the periods referred to in paragraphs 2 and 3.

5. (…)

6. The Chair of the European Data Protection Board shall notify, without undue delay, the decision referred to in paragraph 1 to the concerned supervisory authorities. It shall inform the Commission thereof. The decision shall be published on the website of the European Data Protection Board without delay after the supervisory authority has notified the final decision referred to in paragraph 7.

7. The lead supervisory authority or, as the case may be, the supervisory authority to which the complaint has been lodged shall adopt its final decision on the basis of the decision referred to in paragraph 1, without undue delay and at the latest by one month after the European Data Protection Board has notified its decision. The lead supervisory authority or, as the case may be, the supervisory authority to which the complaint has been lodged, shall inform the European Data Protection Board of the date when its final decision is notified respectively to the controller or the processor and the data subject. The final decision of the concerned supervisory authorities shall be adopted under the terms of Article 54a, paragraph 4a, 4b and 4bb. The final decision shall refer to the decision referred to in paragraph 1 and shall specify that the decision referred to in paragraph 1 will be published on the website of the European Data Protection Board in accordance with paragraph 6. The final decision shall attach the decision referred to in paragraph 1.

Article 59

Opinion by the Commission

(...)

Article 60

Suspension of a draft measure

(...)

Article 61

Urgency procedure

1. In exceptional circumstances, where a supervisory authority concerned considers that there is an urgent need to act in order to protect the rights and freedoms of data subjects, it may, by way of derogation from the consistency mechanism referred to in Articles 57, 58 and 58a or the procedure referred to in Article 54a, immediately adopt provisional measures intended to produce legal effects on its own territory with a specified period of validity which shall not exceed three months. The supervisory authority shall, without delay, communicate those measures and the reasons for adopting them, to the other concerned supervisory authorities, the European Data Protection Board and to the Commission.

2. Where a supervisory authority has taken a measure pursuant to paragraph 1 and considers that final measures need urgently be adopted, it may request an urgent opinion or an urgent binding decision from the European Data Protection Board, giving reasons for requesting such opinion or decision.

3. Any supervisory authority may request an urgent opinion or an urgent binding decision, as the case may be, from the European Data Protection Board where a competent supervisory authority has not taken an appropriate measure in a situation where there is an urgent need to act, in order to protect the rights and freedoms of data subjects, giving reasons for requesting such opinion or decision, including for the urgent need to act.

4. By derogation from paragraph 3 of Article 58 and paragraph 2 of Article 58a, an urgent opinion or an urgent binding decision referred to in paragraphs 2 and 3 of this Article shall be adopted within two weeks by simple majority of the members of the European Data Protection Board.

Article 62

Exchange of information

1. The Commission may adopt implementing acts of general scope for

   (a) (…)

   (b) (…)

   (c) (…)

   (d) specifying the arrangements for the exchange of information by electronic means between supervisory authorities, and between supervisory authorities and the European Data Protection Board, in particular the standardised format referred to in Article 58.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 87(2).

2. (…)

3. (…)

Article 63

Enforcement

(…)

SECTION 3
EUROPEAN DATA PROTECTION BOARD

Article 64

European Data Protection Board

1a. The European Data Protection Board is hereby established as body of the Union and shall have legal personality.

1b. The European Data Protection Board shall be represented by its Chair.

2. The European Data Protection Board shall be composed of the head of one supervisory authority of each Member State and of the European Data Protection Supervisor, or their respective representatives.

3. Where in a Member State more than one supervisory authority is responsible for monitoring the application of the provisions pursuant to this Regulation, a joint representative shall be appointed in accordance with the national law of that Member State.

4. The Commission shall have the right to participate in the activities and meetings of the European Data Protection Board without voting right. The Commission shall designate a representative. The chair of the European Data Protection Board shall communicate to the Commission the activities of the European Data Protection Board.

5. In cases related to Article 58a, the European Data Protection Supervisor shall have voting rights only on decisions which concern principles and rules applicable to the Union institutions, bodies, offices, and agencies which correspond in substance to those of this Regulation.

Article 65

Independence

1. The European Data Protection Board shall act independently when performing its tasks or exercising its powers pursuant to Articles 66 and 67.

2. Without prejudice to requests by the Commission referred to in point (b) of paragraph 1 and in paragraph 2 of Article 66, the European Data Protection Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from anybody.

Article 66

Tasks of the European Data Protection Board

1. The European Data Protection Board shall ensure the consistent application of this Regulation. To this effect, the European Data Protection Board shall, on its own initiative or, where relevant, at the request of the Commission, in particular:

(aa) monitor and ensure the correct application of this Regulation in the cases provided for in Article 57(3) without prejudice to the tasks of national supervisory authorities;

(a) advise the Commission on any issue related to the protection of personal data in the Union, including on any proposed amendment of this Regulation;

(aa) advise the Commission on the format and procedures for the exchange of information between controllers, processors and supervisory authorities for binding corporate rules;

(ab) (new) issue guidelines, recommendations, and best practices on procedures for deleting links, copies or replications of personal data from publicly available communication services as referred to in Article 17 paragraph 2;

(b) examine, on its own initiative or on request of one of its members or on request of the Commission, any question covering the application of this Regulation and issue guidelines, recommendations and best practices in order to encourage consistent application of this Regulation;

(ba)(new) issue guidelines, recommendations and best practices in accordance with point (b) of Article 66(1) for further specifying the criteria and conditions for decisions based on profiling pursuant to Article 20(2);

(bb)(new) issue guidelines, recommendations and best practices in accordance with point (b) of Article 66(1) for establishing the data breaches and determining the undue delay referred to in paragraphs 1 and 2 of Article 31 and for the particular circumstances in which a controller or a processor is required to notify the personal data breach;

(bc)(new) issue guidelines, recommendations and best practices in accordance with point (b) of Article 66(1) as to the circumstances in which a personal data breach is likely to result in a high risk for the rights and freedoms of the individuals referred to in Article 32(1).

(bd)(new) issue guidelines, recommendations and best practices in accordance with point (b) of Article 66(1) for the purpose of further specifying the criteria and requirements for data transfers based on binding corporate rules adhered to by controllers and binding corporate rules adhered to by processors and on further necessary requirements to ensure the protection of personal data of the data subjects concerned referred to in Article 43;

(be)(new) issue guidelines, recommendations and best practices in accordance with point (b) of Article 66(1) for the purpose of further specifying the criteria and requirements for the data transfers on the basis of Article 44(1);

(ba) draw up guidelines for supervisory authorities concerning the application of measures referred to in paragraph 1, 1b and 1c of Article 53 and the fixing of administrative fines pursuant to Articles 79;

(c) review the practical application of the guidelines, recommendations and best practices referred to in point (b) and (ba);

(ca0) issue guidelines, recommendations and best practices in accordance with point (b) of paragraph 1 for establishing common procedures for reporting by individuals of infringements of this Regulation pursuant to Article 49(2).

(ca) encourage the drawing-up of codes of conduct and the establishment of data protection certification mechanisms and data protection seals and marks pursuant to Articles 38 and 39;

(cb) carry out the accreditation of certification bodies and its periodic review pursuant to Article 39a and maintain a public register of accredited bodies pursuant to paragraph 6 of Article 39a and of the accredited controllers or processors established in third countries pursuant to paragraph 4 of Article 39;

(cd) specify the requirements mentioned in paragraph 3 of Article 39a with a view to the accreditation of certification bodies under Article 39;

(cda) give the Commission an opinion on the certification requirements referred to in paragraph 7 of Article 39a;

(cdb) give the Commission an opinion on the the icons referred to in paragraph 4b of Article 12;

(ce) give the Commission an opinion for the assessment of the adequacy of the level of protection in a third country or international organization, including for the assessment whether a third country or the territory or the international organization or the specified sector no longer ensures an adequate level of protection. To that end, the Commission shall provide the European Data Protection Board with all necessary documentation, including correspondence with the government of the third country, territory or processing sector within that third country or the international organisation.

(d) issue opinions on draft decisions of supervisory authorities pursuant to the consistency mechanism referred to in paragraph 2 and on matters submitted pursuant to paragraph 4 of Article 57;

(e) promote the co-operation and the effective bilateral and multilateral exchange of information and practices between the supervisory authorities;

(f) promote common training programmes and facilitate personnel exchanges between the supervisory authorities, as well as, where appropriate, with the supervisory authorities of third countries or of international organisations;

(g) promote the exchange of knowledge and documentation on data protection legislation and practice with data protection supervisory authorities worldwide.

(gb) issue opinions on codes of conduct drawn up at Union level pursuant to Article 38(4);

(i) maintain a publicly accessible electronic register of decisions taken by supervisory authorities and courts on issues dealt with in the consistency mechanism.

2. Where the Commission requests advice from the European Data Protection Board, it may indicate a time limit, taking into account the urgency of the matter.

3. The European Data Protection Board shall forward its opinions, guidelines, recommendations, and best practices to the Commission and to the committee referred to in Article 87 and make them public.

4. (…)

4a. The European Data Protection Board shall, where appropriate, consult interested parties and give them the opportunity to comment within a reasonable period. The European Data Protection Board shall, without prejudice to Article 72, make the results of the consultation procedure publicly available.

Article 67

Reports

1. (…)

2. The European Data Protection Board shall draw up an annual report regarding the protection of natural persons with regard to the processing of personal data in the Union and, where relevant, in third countries and international organisations. The report shall be made public and be transmitted to the European Parliament, the Council and the Commission.

3. The annual report shall include a review of the practical application of the guidelines, recommendations and best practices referred to in point (c) of Article 66(1) as well as of the binding decisions referred to in paragraph 3 of Article 57.

Article 68

Procedure

1. The European Data Protection Board shall take decisions by a simple majority of its members, unless otherwise provided for in this Regulation.

2. The European Data Protection Board shall adopt its own rules of procedure by a two-third majority of its members and organise its own operational arrangements.

Article 69

Chair

1. The European Data Protection Board shall elect a chair and two deputy chairs from amongst its members by simple majority.

2. The term of office of the Chair and of the deputy chairs shall be five years and be renewable once.

Article 70

Tasks of the chair

1. The chair shall have the following tasks:

   (a) to convene the meetings of the European Data Protection Board and prepare its agenda;

   (aa) to notify decisions adopted by the European Data Protection Board pursuant to Article 58a to the lead supervisory authority and the concerned supervisory authorities;

   (b) to ensure the timely performance of the tasks of the European Data Protection Board, in particular in relation to the consistency mechanism referred to in Article 57.

2. The European Data Protection Board shall lay down the attribution of tasks between the chair and the deputy chairs in its rules of procedure.

Article 71

Secretariat

1. The European Data Protection Board shall have a secretariat, which shall be provided by the European Data Protection Supervisor.

1a. The secretariat shall perform its tasks exclusively under the instructions of the Chair of the European Data Protection Board.

1b. The staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the European Data Protection Board by this Regulation shall be subject to separate reporting lines from the staff involved in carrying out tasks conferred on the European Data Protection Supervisor.

1c. Where appropriate, the European Data Protection Board and the European Data Protection Supervisor shall establish and publish a Memorandum of Understanding implementing this Article, determining the terms of their cooperation, and applicable to the staff of the European Data Protection Supervisor involved in carrying out the tasks conferred on the European Data Protection Board by this Regulation.

2. The secretariat shall provide analytical, administrative and logistical support to the European Data Protection Board.

3. The secretariat shall be responsible in particular for:

(a) the day-to-day business of the European Data Protection Board;

(b) the communication between the members of the European Data Protection Board, its chair and the Commission and for communication with other institutions and the public;

(c) the use of electronic means for the internal and external communication;

(d) the translation of relevant information;

(e) the preparation and follow-up of the meetings of the European Data Protection Board;

(f) the preparation, drafting and publication of opinions, decisions on the settlement of disputes between supervisory authorities and other texts adopted by the European Data Protection Board.

Article 72

Confidentiality

1. The discussions of the European Data Protection Board shall be confidential where the Board deems it necessary, as provided for in its rules of procedure.

2. Access to documents submitted to members of the European Data Protection Board, experts and representatives of third parties shall be governed by Regulation (EC) No 1049/2001.

3. (…)

CHAPTER VIII

REMEDIES, LIABILITY AND SANCTIONS

Article 73

Right to lodge a complaint with a supervisory authority

1. Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringment if the data subject considers that the processing of personal data relating to him or her does not comply with this Regulation.

2. (…)

3. (…)

4. (…)

5. The supervisory authority to which the complaint has been lodged shall inform the complainant on the progress and the outcome of the complaint including the possibility of a judicial remedy pursuant to Article 74.

Article 74

Right to a judicial remedy against a supervisory authority

1. Without prejudice to any other administrative or non-judicial remedy, each natural or legal person shall have the right to an effective judicial remedy against a legally binding decisions of a supervisory authority concerning them.

2. Without prejudice to any other administrative or non-judicial remedy, each data subject shall have the right to a an effective judicial remedy where the supervisory authority competent in accordance with Article 51 and Article 51a does not deal with a complaint or does not inform the data subject within three months on the progress or outcome of the complaint lodged under Article 73.

3. Proceedings against a supervisory authority shall be brought before the courts of the Member State where the supervisory authority is established.

3a. Where proceedings are brought against a decision of a supervisory authority which was preceded by an opinion or a decision of the European Data Protection Board in the consistency mechanism, the supervisory authority shall forward that opinion or decision to the court.

4. (…)

5. (…)

Article 75

Right to an effective judicial remedy against a controller or processor

1. Without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority under Article 73, each data subject shall have the right to an effective judicial remedy if they consider that their rights under this Regulation have been infringed as a result of the processing of their personal data in non-compliance with this Regulation.

2. Proceedings against a controller or a processor shall be brought before the courts of the Member State where the controller or processor has an establishment. Alternatively, such proceedings may be brought before the courts of the Member State where the data subject has his or her habitual residence, unless the controller or processor is a public authority of a Member State acting in the exercise of its public powers.

3. (…)

4. (…)

Article 76

Representation of data subjects

1. The data subject shall have the right to mandate a body, organisation or association, which has been properly constituted according to the law of a Member State, which is of non-profit making character, and whose statutory objectives are in the public interest and which is active in the field of the protection of data subject's rights and freedoms with regard to the protection of their personal data to lodge the complaint on his or her behalf and to exercise the rights referred to in Articles 73, 74 and 75 on his or her behalf and to exercise the right to receive compensation referred to in Article 77 on his or her behalf if provided for by Member State law.
2. Member States may provide that any body, organisation or association referred to in paragraph 1, independently of a data subject's mandate, shall have in such Member State the right to lodge a complaint with the supervisory authority competent in accordance with Article 73 and to exercise the rights referred to in Articles 74 and 75 if it considers that the rights of a data subject have been infringed as a result of the processing of personal data that is not in compliance with this Regulation.

3. (…)

4. (…)

5. (…)

Article 76a

Suspension of proceedings

1. Where a competent court of a Member State has information on proceedings concerning the same subject matter as regards processing of the same controller or processor are pending in a court in another Member State, it shall contact that court in the other Member State to confirm the existence of such proceedings.

2. Where proceedings concerning the same subject matter as regards processing of the same controller or processor are pending in a court in another Member State, any competent court other than the court first seized may suspend its proceedings.

2a. Where these proceedings are pending at first instance, any court other than the court first seized may also, on the application of one of the parties, decline jurisdiction if the court first seized has jurisdiction over the actions in question and its law permits the consolidation thereof.

Article 77

Right to compensation and liability

1. Any person who has suffered material or immaterial damage as a result of an infringement of the Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.

2. Any controller involved in the processing shall be liable for the damage caused by the processing which is not in compliance with this Regulation. A processor shall be liable for the damage caused by the processing only where it has not complied with obligations of this Regulation specifically directed to processors or acted outside or contrary to lawful instructions of the controller.

3. A controller or processor shall be exempted from liability in accordance with paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.

4. Where more than one controller or processor or a controller and a processor are involved in the same processing and, where they are, in accordance with paragraphs 2 and 3, responsible for any damage caused by the processing, each controller or processor shall be held liable for the entire damage, in order to ensure effective compensation of the data subject.

5. Where a controller or processor has, in accordance with paragraph 4, paid full compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of responsibility for the damage in accordance with the conditions set out in paragraph 2.

6. Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under national law of the Member State referred to in paragraph 2 of Article 75.

Article 78

Penalties

(…)

Article 79

General conditions for imposing administrative fines

1a. Each supervisory authority shall ensure that the imposition of administrative fines pursuant to this Article in respect of infringements of this Regulation referred to in paragraphs 3 (new), 3a (new), 3aa (new) shall in each individual case be effective, proportionate and dissuasive.

2. (…)

2a. Administrative fines shall, depending on the circumstances of each individual case, be imposed in addition to, or instead of, measures referred to in points (a) to (fa) and (h) of paragraph 1b of Article 53. When deciding whether to impose an administrative fine and deciding on the amount of the administrative fine in each individual case due regard shall be given to the following:

(a) the nature, gravity and duration of the infringement having regard to the nature scope or purpose of the processing concerned as well as the number of data subjects affected and the level of damage suffered by them;

(b) the intentional or negligent character of the infringement;

(c) (…)

(d) action taken by the controller or processor to mitigate the damage suffered by data subjects;

(e) the degree of responsibility of the controller or processor having regard to technical and organisational measures implemented by them pursuant to Articles 23 and 30;

(f) any relevant previous infringements by the controller or processor;

(g) (new) the degree of co-operation with the supervisory authority, in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

(ga) (new) the categories of personal data affected by the infringement;

(h) the manner in which the infringement became known to the supervisory authority, in particular whether, and if so to what extent, the controller or processor notified the infringement;

(i) in case measures referred to in paragraph 1b of Article 53, have previously been ordered against the controller or processor concerned with regard to the same subject-matter, compliance with these measures;

(j) adherence to approved codes of conduct pursuant to Article 38 or approved certification mechanisms pursuant to Article 39;

(k) (…)

(m) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits gained, or losses avoided, directly or indirectly, from the infringement.

2b. If a controller or processor intentionally or negligently, for the same or linked processing operations, violates several provisions of this Regulation, the total amount of the fine may not exceed the amount specified for the gravest violation.

3. (…)

3(new). Infringments of the following provisions shall, in acccordance with paragraph 2a, be subject to administrative fines up to 10 000 000 EUR, or in case of an undertaking, up to 2% of the total worlwide annual turnover of the preceding financial year, whichever is higher:

(a) the obligations of the controller and the processor pursuant to Articles 8, 10, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39 and 39a;

(aa) the obligations of the certification body pursuant to Articles 39 and 39a;

(ab) the obligations of the monitoring body pursuant to Article 38a(4);

3a(new). Infringments of the following provisions shall, in acccordance with paragraph 2a, be subject to administrative fines up to 20 000 000 EUR, or in case of an undertaking, up to 4% of the total worlwide annual turnover of the preceding financial year, whichever is higher:

(a) the basic principles for processing, including conditions for consent, pursuant to Articles 5, 6, 7 and 9;

(b) the data subjects' rights pursuant to Articles 12-20;

(ba) the transfers of personal data to a recipient in a third country or an international organisation pursuant to Articles 40-44;

(bb) any obligations pursuant to Member State laws adopted unter Chapter IX;

(c) non-compliance with an order or a temporary or definite limitation on processing or the suspension of data flows by the supervisory authority pursuant to Article 53 (1b) or does not provide access in violation of Article 53(1).

3aa(new). Non-compliance with an order by the supervisory authority as referred to in Article 53(1b) shall, in acccordance with paragraph 2a, be subject to administrative fines up to 20 000 000 EUR, or in case of an undertaking, up to 4% of the total worlwide annual turnover of the preceding financial year, whichever is higher:

3b. Without prejudice to the corrective powers of supervisory authorities pursuant to Article 53(1b), each Member State may lay down the rules on whether and to what extent administrative fines may be imposed on public authorities and bodies established in that Member State.

4. The exercise by the supervisory authority of its powers under this Article shall be subject to appropriate procedural safeguards in conformity with Union law and Member State law, including effective judicial remedy and due process.

5. Where the legal system of the Member State does not provide for administrative fines, Article 79 may be applied in such a manner that the fine is initiated by the competent supervisory authority and imposed by competent national courts, while ensuring that these legal remedies are effective and have an equivalent effect to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. These Member States shall notify to the Commission those provisions of their laws by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment law or amendment affecting them.

6. (…)

7. (…)

Article 79b

Penalties

1. Member States shall lay down the rules on penalties applicable to infringements of this Regulation in particular for infringements which are not subject to administrative fines pursuant to Article 79, and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.

2. (…)

3. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

CHAPTER IX
PROVISIONS RELATING TO SPECIFIC DATA PROCESSING SITUATIONS

Article 80

Processing of personal data and freedom of expression and information

1. Member States shall by law reconcile the right to the protection of personal data pursuant to this Regulation with the right to freedom of expression and information, including the processing of personal data for journalistic purposes and the purposes of academic, artistic or literary expression.

2. For the processing of personal data carried out for journalistic purposes or the purpose of academic artistic or literary expression, Member States shall provide for exemptions or derogations from the provisions in Chapter II (principles), Chapter III (rights of the data subject), Chapter IV (controller and processor), Chapter V (transfer of personal data to third countries or international organizations), Chapter VI (independent supervisory authorities), Chapter VII (co-operation and consistency) and Chapter IX (specific data processing situations) if they are necessary to reconcile the right to the protection of personal data with the freedom of expression and information.

3. Each Member State shall notify to the Commission those provisions of its law which it has adopted pursuant to paragraph 2 and, without delay, any subsequent amendment law or amendment affecting them.

Article 80a

Processing of personal data and public access to official documents

Personal data in official documents held by a public authority or a public body or a private body for the performance of a task carried out in the public interest may be disclosed by the authority or body in accordance with Union law or Member State law to which the public authority or body is subject in order to reconcile public access to official documents with the right to the protection of personal data pursuant to this Regulation.

Article 80aa

Processing of personal data and reuse of public sector information

(…)

Article 80b

Processing of national identification number

Member States may further determine the specific conditions for the processing of a national identification number or any other identifier of general application. In this case the national identification number or any other identifier of general application shall be used only under appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation.

Article 81

Processing of personal data for health - related purposes

(…)

Article 81a

Processing of genetic data

(…)

Article 82

Processing in the employment context

1. Member States may, by law or by collective agreements, provide for more specific rules to ensure the protection of the rights and freedoms in respect of the processing of employees' personal data in the employment context, in particular for the purposes of the recruitment, the performance of the contract of employment, including discharge of obligations laid down by law or by collective agreements, management, planning and organisation of work, equality and diversity in the workplace, health and safety at work, protection of employer's or customer's property and for the purposes of the exercise and enjoyment, on an individual or collective basis, of rights and benefits related to employment, and for the purpose of the termination of the employment relationship.

2. These rules shall include suitable and specific measures to safeguard the data subject's human dignity, legitimate interests and fundamental rights, with particular regard to the transparency of processing, the transfer of data within a group of undertakings or group of entreprises and monitoring systems at the work place.

2a. Each Member State shall notify to the Commission those provisions of its law which it adopts pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

3. (…)

Article 83

Safeguards and derogations for the processing of personal data for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes

1. Processing of personal data for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes, shall be subject to in accordance with this Regulation appropriate safeguards for the rights and freedoms of the data subject. These safeguards shall ensure that technical and organisational measures are in place in particular in order to ensure the respect of the principle of data minimisation. These measures may include pseudonymisation, as long as these purposes can be fulfilled in this manner. Whenever these purposes can be fulfilled by further processing of data which does not permit or not any longer permit the identification of data subjects these purposes shall be fulfilled in this manner.

2. Where personal data are processed for scientific and historical research purposes or statistical purposes, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 17a and 19 subject to the conditions and safeguards referred to in paragraph 1 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of these purposes.

3. Where personal data are processed for archiving purposes in the public interest, Union or Member State law may provide for derogations from the rights referred to in Articles 15, 16, 17a, 17b, 18 and 19 subject to the conditions and safeguards referred to in paragraph 1 in so far as such rights are likely to render impossible or seriously impair the achievement of the specific purposes, and such derogations are necessary for the fulfilment of these purposes.

4. Where processing referred to in paragraphs 2 and 3 serves at the same time another purpose, the derogations shall apply only to the processing for the purposes referred to in those paragraphs.

Article 84

Obligations of secrecy

1. Member States may adopt specific rules to set out the powers by the supervisory authorities laid down in points (da) and (db) of Article 53(1) in relation to controllers or processors that are subjects under Union or Member State law or rules established by national competent bodies to an obligation of professional secrecy or other equivalent obligations of secrecy where this is necessary and proportionate to reconcile the right of the protection of personal data with the obligation of secrecy. These rules shall only apply with regard to personal data which the controller or processor has received from or has obtained in an activity covered by this obligation of secrecy.

2. Each Member State shall notify to the Commission the rules adopted pursuant to paragraph 1, by the date specified in Article 91(2) at the latest and, without delay, any subsequent amendment affecting them.

Article 85

Existing data protection rules of churches and religious associations

1. Where in a Member State, churches and religious associations or communities apply, at the time of entry into force of this Regulation, comprehensive rules relating to the protection of individuals with regard to the processing of personal data, such rules may continue to apply, provided that they are brought in line with the provisions of this Regulation.

2. Churches and religious associations which apply comprehensive rules in accordance with paragraph 1, shall be subject to the control of an independent supervisory authority which may be specific, provided that fulfils the conditions laid down in Chapter VI of this Regulation.

CHAPTER X
DELEGATED ACTS AND IMPLEMENTING ACTS

Article 86

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 12(4c) and Article 39a(7) shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

3. The delegation of power referred to in Article 12(4c) and Article 39a(7) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 12(4c) and Article 39a(7) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

Article 87

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 5 thereof, shall apply.

CHAPTER XI

FINAL PROVISIONS

Article 88

Repeal of Directive 95/46/EC

1. Directive 95/46/EC is repealed on the date specified in Article 91(2).

2. References to the repealed Directive shall be construed as references to this Regulation. References to the Working Party on the Protection of Individuals with regard to the Processing of Personal Data established by Article 29 of Directive 95/46/EC shall be construed as references to the European Data Protection Board established by this Regulation.

Article 89

Relationship to Directive 2002/58/EC

This Regulation shall not impose additional obligations on natural or legal persons in relation to the processing of personal data in connection with the provision of publicly available electronic communications services in public communication networks in the Union in relation to matters for which they are subject to specific obligations with the same objective set out in Directive 2002/58/EC.

Article 89b

Relationship to previously concluded Agreements

International agreements involving the transfer of personal data to third countries or international organisations which were concluded by Member States prior to the entry into force of this Regulation, and which are in compliance with Union law applicable prior to the entry into force of this Regulation, shall remain in force until amended, replaced or revoked.

Article 90

Evaluation

1. The Commission shall submit reports on the evaluation and review of this Regulation to the European Parliament and the Council at regular intervals.

2. In the context of these evaluations the Commission shall examine, in particular, the application and functioning of the provisions of:

   (a) Chapter V on the transfer of personal data to third countries or international organisations with particular regard to decisions adopted pursuant to article 41(3) and decisions adopted on the basis of Article 25(6) of Directive 95/46/EC;

   (b) Chapter VII on Co-operation and Consistency.

2a. For the purpose referred to in paragraph 1, the Commission may request information from Member States and supervisory authorities.

2b. In carrying out the evaluations and reviews referred to in paragraphs 1 and 2, the Commission shall take into account the positions and findings of the European Parliament, the Council, as well as other relevant bodies or sources.

3. The first report shall be submitted no later than four years after the entry into force of this Regulation. Subsequent reports shall be submitted every four years thereafter. The reports shall be made public.

4. The Commission shall, if necessary, submit appropriate proposals with a view to amending this Regulation, in particular taking into account of developments in information technology and in the lightof the state of progress in the information society.

Article 90a (new)

Review of other EU data protection instruments

The Commission shall, if appropriate, submit legislative proposals with a view to amending other EU legal instruments on the protection of personal data, in order to ensure uniform and consistent protection of individuals with regard to the processing of personal data. This shall in particular concern the rules relating to the protection of individuals with regard to the processing of personal data by Union institutions, bodies, offices and agencies and on the free movement of such data.

Article 91

Entry into force and application

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

2. It shall apply from [*two years from the date referred to in paragraph 1*]. *

**** OJ: insert the date***

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*